

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.10.2018

Delivered on : 10.12.2018

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN**W.P.Nos.3654 to 3656 of 2018****and****WMP.Nos.4484 to 4486 of 2018**

K.Pechimuthu ..Petitioner in WP.3654/2018

P.Kanagavalli ..Petitioner in WP.3655/2018

R.Palanisamy ..Petitioner in WP.3656/2018

VS

1.Power Grid Corporation of India Limited
rep.by its Branch Manager,
400/230 KV Office,
Chennai Andavar Koil Opposite
Karumathampatty Post,
Coimbatore – 641 659.

2.The Chief Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
TANGEDCO, Tatapath,
Coimbatore.

3.The Junior Engineer,
Electric Lines, TANGEDCO
Tatapath, Coimbatore.

.. Respondents
in all the writ petitions

WP.No.3654 of 2018: Petition filed under Article 226 of the

Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from taking overhead electricity lines across or over and from installing electricity poles in the petitioner's agricultural lands situated in S.No.358/1B - 1.52.50 Hec, S.No.467/1A1 - 1.38.50 Hec. and S.No.468/1 - 0.10.00 Hec. in total 3.1.00 Hectares of Chettiyakkapalayam Village, Kinathukadavu Taluk, Coimbatore District.

WP.No.3655 of 2018: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from taking overhead electricity lines across or over and from installing electricity poles in the petitioner's agricultural lands situated in S.No.357/3A - 0.47.50 Hec, S.No.358/1A - 1.13.00 Hec. and S.No.468/3A1 - 2.8.50 Hec, S.No.461/1 - 2.30.0, S.No.463/3B - 0.54.00 in total 6.53.00 Hectares of Chettiyakkapalayam Village, Kinathukadavu Taluk, Coimbatore District.

WP.No.3656 of 2018: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from taking overhead electricity lines across or over and from installing electricity poles in the petitioner's agricultural lands situated in S.No.468/3A2 - 1.58.50 Hec, S.No.468/3C - 0.62.00 Hec. and S.No.463/3A2 - 1.36.00 Hec. in total 3.56.50 Hectares in Chettiyakkapalayam Village, Kinathukadavu Taluk, Coimbatore District.

For Petitioners : Mr.V.Ravi

For Respondents : Mr.Kalyankumar for
M/s.Aiyar & Dolia

COMMON ORDER

The prayer made in all these writ petitions is to issue a mandamus, forbearing the respondents from taking overhead electricity lines and installing electricity poles in the petitioners' agricultural lands.

2.The case of the petitioners as has been culled out in the writ petitions are that they are the owners of the agricultural lands situated at Chettiyakkapalayam Village, Kinathukadavu Taluk, Coimbatore District, the details of which run thus:

Name of the Petitioners	Survey Numbers	Extent in Hectares
K.Pechimuthu	358/1B	1.52.50
	467/1A1	1.38.50
	468/1	0.10.00
P.Kanagavalli	357/3A	0.47.50
	358/1A	1.13.00
	468/3A1	2.08.50
	461/1	2.30.00
	463/3B	0.54.00
R.Palanisamy	468/3A2	1.58.50
	468/3C	0.62.00
	463/3A2	1.36.00

They are also having coconut trees and other crops in the said lands.

On 23.12.2017, the officials of the respondents came to their lands and started inspection. On enquiry, it came to light that the respondents are going to lay electricity poles and take overhead high tension lines above and across the aforesaid lands. Apprehending that the proposed action would render their agricultural lands as useless and unfit for cultivation, the petitioners raised their objections by way of representations to the respondents on 31.01.2018. Finding no response on the said representations, the petitioners have come up with the present writ petitions for the aforesaid relief.

3. Upon notice, the first respondent filed separate counter affidavits in all the writ petitions, stating *inter alia*, that the subject matter of the writ petitions relates to laying of transmission line with regard to Scheme III viz., 320KV HVDC Pugalur-Trichur, which is proposed to be laid/erected in Location No.54/1 and the corridor between 54/1 and 54/2 in the lands belonging to the petitioners; the route of the transmission lines as well as the tower positions are finalized purely on the merits of techno-economic consideration; and this respondent is authorized with the powers of Telegraphic authority under Section 10 of the said Act to enter upon any land for the purpose of laying transmission lines or erecting towers. It is further

stated therein that the project is in the initial stage of construction; no damage will be caused to human life on account of laying of HT lines as the required safety clearance are maintained; and if any damage is caused to the standing trees/crops during the time of execution of the works, compensation will be paid, as per the assessment made by the Agriculture/Horticulture/Revenue/Forest Departments, Government of Tamil Nadu and hence, the apprehension of the petitioners is wholly baseless and misconceived.

4.The learned counsel for the petitioners submitted that without making prior intimation and without following due procedure as contemplated under the Electricity Act, the respondents are hastily attempting to install poles and take overhead lines across the agricultural lands of the petitioners, which is arbitrary, illegal and against the principles of natural justice. Further, the learned counsel, relying on the decision of the Division Bench of this Court *dated 31.07.2018 in W.A.No.1294 of 2017 [D.Rajendran and others v. Tamil Nadu Electricity Board and another]*, submitted that once the petitioners, who are the owners of the lands, had objected to the erection of the poles, the respondents should have followed the procedure under Section 16(1) of the Telegraph Act (for short, "the

Act”) and approached the District Magistrate for an order to proceed further. He also submitted that neither Section 10 nor Section 16 of the Telegraph Act or Section 164 of the Electricity Act authorize trespassing by the respondents over the lands of the petitioners. According to him, what has been done in the present case by the respondents is nothing but a sheer illegal trespass. Thus, the learned counsel sought appropriate direction to the respondents in these writ petitions.

5.Per contra, the learned counsel appearing for the respondents submitted that Section 10 of the Act authorises the telegraph authority to place and maintain telegraph lines in any immovable property and Section 16(1) of the Act confers upon the District Magistrate/District Collector only a supervisory power, in that it empowers him to ensure that the telegraph authority exercises its powers under Section 10(d) without any resistance or obstruction raised by the persons interested in the lands, where the telegraph lines are sought to be installed. Thus, according to him, as per the Scheme of the Act, the District Collector was not empowered either under Section 16 or Section 17 of the Act to decide upon the route and his power was more in the nature of execution of a decision taken under Section 10 of the Act or under

Section 67 or 68 of the Electricity Act, 2003 and therefore, when the experts namely the officials of the Board took a definite stand that the route, which was proposed was technically more feasible and it would be in the interest of the public, the District Collector has no power to change the alignment. In support of the same, the learned counsel placed reliance on the Division Bench decisions (i)*Judgement dated 10.04.2008 made in W.A.No.464 of 2008 [R.Kannan rep.by his power agent K.Sivasubramanian v. Power Grid Corporation (India) Ltd and others]* and (ii)(2013) 1 MLJ 56 [*Sri Vignesh Yarns Pvt. Ltd rep. by its Managing Director v. S.Subramaniam*]. Thus, the learned counsel defended the action proposed to be taken by the respondents and sought to dismiss all these writ petitions.

6.Heard the rival submissions and perused the records.

7.It is the grievance of the petitioners that the proposed action of the respondents, laying transmission lines and erection of poles, would damage their agricultural lands and also the trees and crops there. The petitioners also stated that they have not been issued any prior notice as contemplated under the Act and the objections raised by them in the form of representations dated 31.01.2018 have also

not been considered by the respondents. Further, according to them, when the objections qua transmission of lines and erection of towers are raised, the respondent should approach the District Magistrate for an order to proceed further.

8. But, it is the categorical stand of the respondents that they are competent and empowered to enter upon any land for the purpose of laying transmission of lines as well as erecting towers, as the proposed action is only for the benefit of the public at large. Further, according to them, the District Magistrate has no power to issue such order, but only to perform a supervisory role.

9. Irrespective of the rival submissions, this Court is of the view that since the objections raised by the petitioners by way of representations dated 31.01.2018 to the respondents are stated to be pending, it would be appropriate to direct the same to be disposed of, in accordance with law, before the proposed action is taken by the respondents.

10. Accordingly, the respondents are directed to consider the

petitioners' representations dated 31.01.2018 and pass appropriate orders on merits and in accordance with, after affording an opportunity of personal hearing to all the parties, within a period of six weeks from the date of receipt of a copy of this order.

11. With the above direction, all the writ petitions stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.12.2018

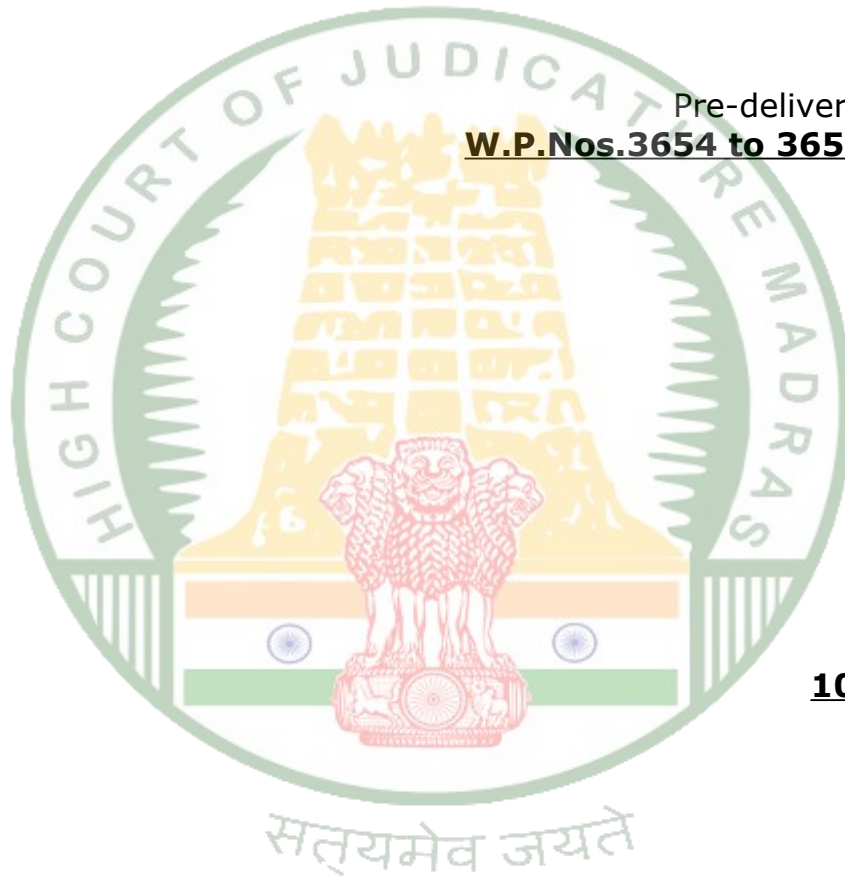
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Note: Issue on 10.12.2018

To

1. The Chief Engineer,
Tamil Nadu Electricity Generation & Distribution Corporation,
TANGEDCO, Tatapath,
Coimbatore.
2. The Junior Engineer,
Electric Lines, TANGEDCO
Tatapath, Coimbatore.

R. MAHADEVAN, J.



Pre-delivery order in
W.P.Nos.3654 to 3656 of 2018

10.12.2018

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