

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.180 of 2018

M/s.Sree Rayalaseema Hi-strength Hypo Ltd.,
Represented by its Authorised Signatory,
Shri.K.Gurumoorthy,
New No.100, Old No.74, 3rd Floor,
Greenways Road Extension, R.A.Puram,
Chennai-600 0028. ... Appellant/Petitioner

Vs.

1. The District Collector-cum-
The District Executive Magistrate,
Kancheepuram District, Tamil Nadu.
2. The Chief Engineer,
Transmission Projects-1,
Tamil Nadu Transmission Corporation Ltd.,
Chennai-600 032.
3. The Superintending Engineer,
General Construction Circle-I,
A-10, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-600 032. ... Respondents/Respondents

Writ Appeal filed Clause 15 of the Letters Patent against
the order dated 11.04.2017 passed by the learned Single Judge in
W.P.No.3973 of 2017 on the file of this Court.

WP.No.3973 of 2017:Petition filed under Article 226 of the
Constitution of India praying that in the circumstances stated
therein, and in the affidavit filed therewith the High Court
will be pleased to issue a Writ of Certiorarified Mandamus call
for the records pertaining to the impugned order dated
23.01.2017 issued by 3rd respondent in RC.No.8015/2016/M1 and
quash the same and further forbear the 1st and 2nd respondent
herein from in any way erecting High Transmission tower/lines in
Survey No.217 of Thiruporur Village, Kancheepuram District,
Tamil Nadu belonging to the petitioner herein.

For appellant : Mr.G.Derrick Sam
For respondents: Mr.A.N.Thambidurai, Spl.G.P. for R-1
Mr.Abdul Saleem for RR-2 and 3

JUDGMENT

(The Judgment of the Court was delivered by M.Venugopal, J)

Heard the Learned Counsel for the Appellant, learned Special Government Pleader appearing for the first respondent and the Learned Counsel for the respondents 2 and 3. By consent of the Learned Counsel appearing for the parties, the main Writ Appeal itself is taken up for final disposal.

2. The Appellant/writ petitioner has preferred the instant intra-Court appeal against the order dated 11.04.2017 in W.P.No.3973 of 2017 passed by the learned single Judge in dismissing the Writ Petition.

3. The Learned Single Judge, while passing the impugned order in W.P.No.3973 of 2017 filed by the Appellant/writ petitioner, at paragraph-5, had observed the following:

"5. The power under Section 16 of the Indian Telegraph Act, 1885 is very limited. The third respondent took note of the fact that there was only one sanctioned approved route. Though the petitioner has made an allegation that the said route has been subsequently modified, there is no material to substantiate the same. On the contrary, it is the consistent stand of respondents 1 and 2 that there has been only one approved sanctioned route. That is the reason why the request of the petitioner was considered with the caveat to make the necessary charges. The decision of respondents 1 and 2 is a conditional one. The petitioner seeks as a matter of right that the erection of high transmission lines has to be done through the alternative route, without asking him to pay the amount for it. When once it is clear that there was only one approved sanctioned route, the petitioner does not have a vested right to contend to the contrary. On facts, the entire work is over except the process of energising the lines."

The Learned single Judge, ultimately, dismissed the Writ Petition stating that the Court does not find any reason to interfere with the impugned order dated 23.01.2017 passed by the

first respondent/District Collector in Rc.No.8015/2016/M1.

4. The Learned Counsel for the Appellant/writ petitioner submitted that the Appellant had purchased the land in S.No.217 of Tiruporur Village, Kancheepuram District, by means of various sale deeds, and on 02.06.2011, the Tamil Nadu Transmission Corporation Limited published a Notification in the New Indian Express newspaper that the said Corporation had sanctioned erection of several transmission lines to transmit and distribute power in the State of Tamil Nadu and there was a proposal to erect 110 KV SC line on DC tower and this was to pass through several villages including the village of Thiruporur. As a matter of fact, the total length in Kilometer was 30.10.

5. The Learned Counsel for the Appellant/writ petitioner brings to the notice of this Court that the contract for execution was entrusted to M/s.IVRCL Limited on 18.10.2012 and the entire line for 11 Kms. was planned to be laid in vacant State Government lands and on small stretch of Central Government salt lands and nowhere the usage of private lands was envisaged. Further, on 02.07.2013, the entire line materials were dumped in the property of the sister concern of the writ petitioner and M/s.IVRCL Limited, vide their letter informed that they are executing the TNEB work and has stated that they stocked the materials for a period of three months. Apart from that, on 08.07.2013, the sister concern of the Appellant/writ petitioner-Company, through letter, informed M/s.IVRCL Limited that they illegally dumped the materials and gave them a notice to vacate the land within 48 hours. On 10.07.2013, the second respondent-Superintending Engineer, according to the Appellant, had informed that the line materials were being stored in their land and requested permission to use the land for the purpose in question. In fact, M/s.IVRCL Limited constructed a concrete foundation in their land for erection of the transmission towers and this was laid without giving any prior notice by M/s.IVRCL Limited to the Appellant/writ petitioner.

6. The Learned Counsel for the Appellant points out that on 30.07.2013, the Appellant/writ petitioner, by letter, requested the second respondent for an inspection of the land to verify the genuineness of the claim and there was no response. On 16.08.2013, the Appellant, through letter to the third respondent-Superintending Engineer, requested to shift the foundation base laid. On 07.04.2014, the Appellant again delivered a letter to the second respondent-Chief Engineer personally requesting to shift the foundation laid. However, no action was taken.

7. It comes to be known that the Appellant/writ petitioner, on an earlier occasion, filed W.P.No.18443 of 2014 seeking to direct the respondents to refer the Appellant's objection letter dated 16.08.2013 in erection of the transmission tower on their lands to the first respondent-District Collector in terms of Section 16(1) of the Indian Telegraph Act, 1885, and this Court disposed of the said Writ Petition on 14.07.2014 directing the third respondent-Superintending Engineer to consider the petitioner's representation, dated 16.08.2013 and to pass orders within a period of one month from the date of receipt of a copy of the order. On 22.08.2014, the Appellant, through letter to the third respondent-Superintending Engineer, gave a brief note on their objections and connected records to justify their claim. On 15.09.2014, the third respondent-Superintending Engineer, has informed the Appellant/writ petitioner for a joint inspection on 20.09.2014 for shifting the foundation stone. As a matter of fact, on 20.09.2014, the joint inspection was conducted and a decision was taken to shift the foundation stone to the adjacent Government lands.

8. It transpires that on 18.10.2014, the Appellant, through letter, informed the third respondent-Superintending Engineer that the foundation was strongly erected and as per route, the towers have to be erected in the Government lands and further informed that claiming any costs for shifting will be illegal and arbitrary. By letter dated 19.02.2015, signed on 21.02.2015, the third respondent-Superintending Engineer, vide communication, directed the petitioner to pay Rs.19,22,620/- for shifting the foundation and the letter was received by the writ petitioner on 26.02.2015 and the Appellant had requested some time to reply.

9. It is to be noted that the Appellant/writ petitioner filed W.P.No.8230 of 2015 before this Court seeking to quash the said communication dated 19.02.2015, signed on 21.02.2015 and to forbear the respondents 2 and 3 herein from in any way erecting the high transmission tower lines in S.No.217 of Thiruporur Village, Kanchipuram District, Tamil Nadu, belonging to the Appellant/writ petitioner. This Court, on 05.11.2015 in W.P.No.8230 of 2015, directed the third respondent-Superintending Engineer to file an appropriate application before the first respondent-District Collector, to enable them to complete the project in question, and on such application, the first respondent-District Collector shall issue notice to the Appellant/writ petitioner and to the third respondent-Superintending Engineer and consider the objections raised by the writ petitioner and pass a reasoned order, on merits and in accordance with law, within a period of six weeks from the date of filing the petition before the first respondent-District Collector.

10. The stand of the Appellant/writ petitioner/Company is that they appeared before the first respondent-District Collector on 16.06.2016 and has made necessary submissions. On 07.09.2016, the first respondent-District Collector, by letter informed the petitioner to convey their stand and the Appellant, vide letter dated 26.09.2016, made detailed submissions and clarified the stand before the first respondent-District Collector. It is further contended by the Learned Counsel for the Appellant/writ petitioner that on 23.01.2017, the first respondent-District Collector passed the impugned order permitting the respondents to carry out the work in the writ petitioner/Appellant's land, without considering any of the submissions of the writ petitioner/Appellant.

11. Therefore, the Appellant/writ petitioner filed the present Writ Petition in W.P.No.3973 of 2017 assailing the order dated 23.01.2017 passed by the first respondent-District Collector. By the impugned order dated 11.04.2017, the learned single Judge has dismissed W.P.No.3973 of 2017. Challenging the same, the present Writ Appeal is filed by the Appellant/writ petitioner/Company.

12. The Writ Appeal is preferred on the ground that from Orchid Common Point upto Thaiyur, all the transmission towers are being erected in Government lands only and only one deviation has been made and that is the present construction in the Appellant's lands.

13. The Learned Counsel for the appellants submitted that the barren Government lands are available within a distance of about 50 metres of the area where the foundation base has been constructed, and therefore, the respondent-Department can very well shift the position of the transmission tower without any major financial implication. Learned Counsel for the Appellant, while advancing his arguments, pointed out that the Appellant alleges bias on the part of the respondents 2 and 3 for the reason that at the initial stage, the contractor had dumped the construction materials on the adjacent land belonging to Sree Maruti Marine Industries Ltd., which is the sister concern of the Appellant- Company and this was done without prior consent of the said Company. Moreover, when a complaint was made against the same, no action was taken and soon thereafter, the construction of the foundation stone began in the land of the Appellant/Company.

14. The Learned Counsel for the Appellant/writ petitioner/Company further proceeds to point out that the present construction carried out in the land of the Appellant/Company, is not a part of the approved route plan, as approved by CMD (TANGEDCO) vide Memo CE/D/CSR/EET/T@FCMWSSB/D4444/2011, dated 11.03.2011 and the

route map vide SE/TR-1/EW/A1/L2157/D153/11, dated 11.05.2011 and original approved drawing signed on 17.05.2011 by the competent authority Executive Engineer and Assistant Engineer, Maraimalai Nagar.

15. In effect, the grievance of the Appellant/Company is that none of the objections were taken note of at the time of passing the impugned order dated 23.01.2017 by the first respondent-District Collector. Added further, the objections were not discussed in the order. As such, according to the Learned Counsel for the Appellant/writ petitioner, there was gross violation of the directions issued by this Court on 14.07.2014 in W.P.No.18443 of 2014.

16. The Learned Counsel for the Appellant further contends that in W.P.No.8230 of 2015, by order dated 05.11.2015, this Court has directed the first respondent-District Collector to pass appropriate orders within six weeks from the date of filing of the petition before the first respondent-District Collector. It is further submitted by the Learned Counsel for the Appellant/writ petitioner that on 16.06.2016, in the instant case, the third respondent filed a petition and orders should have been passed by the First Respondent, according to the Appellant, on or before 28.07.2016. However, without obtaining the Leave of this Court, the case of the Appellant is that the first respondent-District Collector has proceeded to pass orders only on 23.01.2017 under Sections 10 and 16 of the Indian Telegraph Act, 1885, with a delay of six months.

17. Lastly, it is the submission of the Learned Counsel for the Appellant that the impugned order dated 23.01.2017 passed by the first respondent-District Collector, was despatched to the Appellant only on 01.02.2017 and the same was delivered at 4 p.m on 03.02.2017 and even before receipt of the order of the first respondent-District Collector, according to the Appellant, the third respondent has commenced the work.

18. Per contra, it is the submission of the Learned Special Government Pleader appearing for the First Respondent and the Learned Counsel appearing for the Respondent Nos.2 and 3 that in the instant case, the Appellant/writ petitioner furnished a letter on 16.08.2013 addressed to the third respondent-Superintending Engineer stating that their land in S.No.217 belongs to Sree Maruthi Marine Industries Ltd., Thiruporur Village and the Appellant/writ petitioner found that the TNEB people have laid the foundation for putting up the tower for TNEB line in S.No.217, Thiruporur Village and the Appellant/writ petitioner/Company requested to shift the foundation laid by the TNEB people to the adjacent Government land. Significantly, in the said communication of the Appellant, dated 16.08.2013, it is also mentioned that the Appellant/Company would pay necessary

shifting charges and also requested to send an estimation for the foundation to put up in the adjacent Government land. Likewise, on 07.04.2014 also, the Appellant/Company had addressed a communication to the second respondent-Chief Engineer, stating among other things that they would pay necessary shifting charges and also requested to send an estimation for the foundation to be put up in the adjacent Government land.

19. The Learned Special Government Pleader appearing for the first respondent and the Learned Counsel for the respondents 2 and 3, brought to the notice of this Court that to consider the objections of the Appellant/writ petitioner, the Appellant had not appeared before the first respondent-District Collector for enquiry and without appearing before the first respondent-District Collector, it is not open for the Appellant/Company to take a contra stand that their objections were not taken into account. It is also brought to the notice of this Court on behalf of the respondents that the Appellant/writ petitioner-Company has not fulfilled their commitment to pay the amount of Rs.19,22,620/- towards shifting charges.

20. In this connection, it may not be out of place to make a significant mention that Section 164 of the Electricity Act, 2003, speaks of the exercise of powers of Telegraph Authority in certain cases. Section 164 reads as follows:

"Section 164. Exercise of powers of Telegraph Authority in certain cases:-- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

21. It cannot be ignored that 'Public Interest' is always superior to the interest of an individual. In fact, 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.

22. At this stage, this Court aptly points out the decision in the case of Ramgir Uttamgir Goswami Vs. State of Gujarat and another, reported in 1988 (1) GLR 502 (SC), wherein it is observed that the assessment of suitability of the land proposed to be acquired for the concerned public purpose, is primarily for the authority to consider.

23. Insofar 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.

24. It is useful for this Court to recollect the decision in the case of The Patna Electric Supply Co. Ltd. Vs. Patna Municipal Corporation, New Capital Circle and others, reported in AIR 1971 Patna 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."

25. To put it precisely, this Court points out that the powers under Section 10 of the Indian Telegraph Act, 1885 are not independent, as such, but is circumscribed by Section 16(1) by means of specific recital, as per the decision in the case of M.A.Abdulla Vs. Assistant Executive Engineer, KSEB, AIR 2001 Kerala 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.

26. Section 164 of the Electricity Act, 2003, empowers the Corporation 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 in the case of Power Grid Corporation of India Limited Vs. Ajay Kumar Gupta and others, AIR 2012 Allahabad 62.

27. 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 and 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 power 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, the procedure is specified under Section 16 of the Indian Telegraph Act, 1885, is to be adhered to.

28. 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.

29. Further, Section 10 of the Indian Telegraph Act, 1885, deals with the power for the telegraph authority to place and maintain the telegraph lines and posts. Besides this, Section 16 of the Indian Telegraph Act, 1885, enjoins the exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority.

30. It is to be remembered that the District Magistrate, while discharging an administrative function, as per Section 16 of the Indian Telegraph Act, exercises his discretion on the basis of the general principles of natural justice and other procedural regulations. Hence, sub-section (1) of Section 16 of the Indian Telegraph Act was found to be of no way violative of Article 14 of the Constitution of India, as per the decision of the Kerala High Court reported in AIR 1995 Kerala 1 (A.M.Ismail Vs. Union of India). It is further held in the said decision of the Kerala High Court that the duties to be discharged by the District Collector are not purely judicial nature, even though the conferment of judicial functions on the Executive Magistrate or the Special Executive Magistrate is not violative of the Constitution of India.

31. In view of the foregoings and also this Court, taking note of the prime fact that the Appellant/writ petitioner-Company, in its communication dated 16.08.2013 and subsequently on 07.04.2014, addressed to the TNEB authorities, had itself stated that it would pay all the necessary shifting charges and later on, the same was not paid. The said act is a clear fact to

show that the same is not a favourable circumstance in their favour. Apart from that, they were directed to appear before the District Collector for enquiry, but the Appellant/writ petitioner had not appeared to put forward their case for objections.

32. Moreover, the first respondent-District Collector took note of the fact that there was only one sanctioned route. Although the Appellant/writ petitioner before the learned Single Judge, took a stand that the route was subsequently modified, the learned single Judge had categorically, in paragraph 5 of the impugned order extracted supra in W.P.No.3973 of 2017, has in a crystalline fashion, mentioned that there was no material to substantiate the same. In this regard, the categorical stand taken on behalf of the respondents before the learned single Judge and also before this Court is that there was only one approved sanctioned route and that was the only prime reason as to why the request of the Appellant/writ petitioner was considered, of course, with a rider to make necessary payments towards shifting. However, this decision of the respondents can only be considered to be a conditional one.

33. In short, suffice it for this Court to make a pertinent mention that it is not within the domain of the Appellant/writ petitioner to claim either as a matter of fact or as a matter of routine that the frequent high transmission lines was to be done through the alternative route. If at all the Appellant/writ petitioner is aggrieved, as per the Indian Telegraph Act, the Appellant can only claim compensation towards the diminished value of the land, of course, after proving the same in the manner known to law and in accordance with law before the competent authority. Although it is represented on behalf of the Appellant/writ petitioner/Company that they have appeared before the first respondent/District Collector for enquiry and also submitted their objections, but the fact of the matter is that they have not appeared before the first respondent-District Collector in regard to the claim of compensation.

34. At the risk of repetition, this Court once again points out that when there was only one approved sanctioned route, the Appellant/writ petitioner cannot lay a vested right to take contrary stand. On an over-all assessment of the entire conspectus of the attendant facts and circumstances of the instance case, this Court comes to an irresistible conclusion that the entire work according to the respondents, was completed and the lines were energised.

35. Therefore, on going through the impugned order passed by the learned single Judge and also looking at from all angles, this Court does not find any material irregularity or illegality in the order of dismissal passed by the learned single Judge.

Consequently, the Writ Appeal fails and the same is dismissed.
No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

cs

To

1. The District Collector-cum-
The District Executive Magistrate,
Kancheepuram District, Tamil Nadu.
2. The Chief Engineer,
Transmission Projects-1,
Tamil Nadu Transmission Corporation Ltd.,
Chennai-600 032.
3. The Superintending Engineer,
General Construction Circle-I,
A-10, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai-600 032.

+1 cc to Govt Pleader sr 12500

W.A.No.180 of 2018

gj (co)

aa13/03/2018

सत्यमेव जयते

WEB COPY