

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27466, 6256 to 6262, 6631 to 6637, 6641, 6949 of 2017, 34227 of 2016, 5875 to 5877, 7572 & 7573, 7609 & 7610, 8529 of 2017, and 28808, 13170 to 13172, 21163, 31046 of 2018

and

WMP.Nos.29355 to 29357, 6291 to 6296, 6738 to 6747, 7123 to 7136, 7140, 7539 to 7541, 8251 to 8254, 8304 to 8307, 9315 & 9316 of 2017, 29546 of 2016, and 33668 to 33670, 15488 to 15491, 24840 & 24841, 36226 & 36227 of 2018

W.P.No.27466 of 2017:

1. K.N.Devaraj
2. R.Muthusamy Gounder
3. P.Soundarraaj
4. K.K.Duraisamy
5. P.Deivasigamani
6. M.Subramaniam
7. M.M.Palanisamy
8. S.Krishnaveni
9. N.Rangasamy
10. C. Nallasamy Gounder
11. M.Arunachalam
12. C.Sidheeswaran
13. R.Nachimuthu
14. N.Venkatesan
15. A.V.Arjunan

..Petitioners

vs

1.The District Collector,
Erode District, Erode.

2.TANTRANSCO,
Rep. by its Chairman,
10th floor, NPKRR Maaligai,
144, Anna Salai, Chennai-600 002.

3.The Superintendent Engineer,
General Construction Circle,
TANTRANSCO,
Dr.Subbarayan Road,
Tatabad, Coimbatore-12.

4.The Executive Engineer,
General Construction Circle,
TANTRANSCO,
Ellamedu, Ingur,
Perundurai Taluk, Erode district.

.. Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 05.10.2017 in Pa.Mu.No:16404/2017/K4 of the 1st respondent and quash the same and consequently forbearing the respondents from proceeding with the implementation of the project in the lands of the petitioners without acquiring the right of user on the lands of the petitioners mentioned in the impugned order dated 05.10.2017 in Pa.Mu.No:16404/2017/K4.

For Petitioner :Mr.V.Lakshmi Narayanan

for M/s. Va Vu Si Vazhakagam

For Respondents : Mrs.R.Janaki

Additional Government Pleader
for R1

Mr.Abdul Saleem for R2 to R4

COMMON ORDER

The impugned order granting permission to the licensee to erect the High Tension Electricity Power lines is under challenge in the present writ petitions.

2. The grievances of the writ petitioners are that no proper adjudications/enquiry was conducted before entering into the land by the licensee for the purpose of erecting the High Tension Electricity Towers. The full compensation contemplated under the provisions of the Electric Act has not been complied with. Without even paying the full compensation and without proper adjudication, the Authorities are attempting to erect High Tension Electricity Tower in the agricultural lands belongs to the writ petitioners. Thus, the writ petitioners are constrained to move these writ petitions.

3. The learned counsels appearing on behalf of the writ petitioners reiterated that, the Indian Telegraph Act contemplates power for telegraph Authority to place the telegraph lines and poles. Section 10(d) stipulates "in the exercise of the powers conferred by this section, the telegraph authority shall do as little

damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers."

4. Section 16 denotes "exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority". The learned counsel appearing on behalf of the writ petitioners contend that the respondents are not following the provisions of the Act and interfering with the property right of the writ petitioners and erecting High Tension Electricity Towers even without paying the full compensation.

5. The learned counsel for the writ petitioners admits the powers conferred on the Authorities to erect such High Tension Electricity Towers. However, such erections ought to be done by following the procedures contemplated under the statutes and the rules in force. In view of the violations being committed by these officials, the writ petitioners are forced to approach this Hon'ble Court by way of these writ petitions.

6. The learned counsel appearing on behalf of the respondent opposed the contentions by stating that the respondents are following the procedures, in the event of no objection or consent by the owners of the land, the respondents are settling the full compensation without any delay. Only in case of objection, the enquiry is to be conducted by the District Magistrate/District Collector for the purpose of granting permission to the licensee to enter into the land belongs to the owners. Thus, it is made clear that, in the event of no objection by the land owners, the full compensation is to be paid without any delay and in any case even before the commencement of the erection works.

7. It is further made clear that Sec 16, Sub clause 3 contemplates, "if any dispute arises concerning the sufficiency of the compensation to be paid under Section 10 (d) it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction is the property is situate we determined by them".

8. Thus there is an opportunity to the aggrieved persons to approach the District Judge concerned for the purpose of fixing the just compensation with reference to the damage or loss caused to the land owners. In the event of an inadequate compensation if any paid by the licensee of the land owners, the licensee is at liberty to approach the District Judge concerned for the purpose of enhancement of compensation or for the purpose of fixation of just compensation by way of an adjudication. When such provisions are available under the statute enabling the land owners to get fair and just compensation, this Court is of an opinion that the apprehensions raised on behalf of the writ petitioners deserves no consideration. However, it is made clear that, in the event of no objection by the land owners, the full compensation is to be settled by the licensee without causing any undue delay.

9. The Hon'ble Supreme Court of India reiterated the said provisions in the case of Power Grid Corporation of India Limited Vs. Century Textiles and Industries Limited and Others reported in (2017) 5 SCC 143 and the relevant paragraphs No.23, 24 and 27 are extracted hereunder:-

" 23. Section 10 of the Telegraph Act, 1885 empowers the telegraph authority to place and maintain a telegraph line under,

over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Telegraph Act, 1885 obliges the telegraph authority to ensure that it causes as little damage as possible and that the telegraph authority shall also be obliged to pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

24. As Power Grid is given the powers of telegraph authority, Rule 3(1) of the 2006 Rules ceases to apply in the case of Power Grid by virtue of execution clause contained in sub-rule (4) of Rule 3 which reads as under:

“3. (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.”

27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16(c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.”

10. This Court in earlier occasions considered the similar issues in WP.No.30124 of 2018 and delivered the judgment on 07.12.2018, wherein, this Court considered the provisions of the Electricity Act, 2003 and Indian Telegraph Act, 1885 and the

relevant paragraphs are extracted hereunder:-

" 35. Thus, this Court is of the considered opinion that Article 300 A of the Constitution of India enumerates that ? No person shall be deprived of his property save by authority of law?. Thus, property right is a Constitutional right. Undoubtedly, a citizen of India has got a property right under the Constitution though it is not a fundamental right. The property right is no more a fundamental right. Thus, no person shall be deprived of his property save by authority of law. In order to countenance the Constitutional right of the citizen of this great nation, the respondents are bound to establish that they are implementing the Project for the welfare of the public under the authority of law.

36. In this regard it is to be noted that the Sections 68 and 164 of the Electricity Act, 2003 confers power to the Appropriate Government to erect Overhead lines for the transmission of electricity or for the purpose of telephonic and telegraphic communications. Section 164 of the Electricity Act, 2003 categorically enumerates that 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, 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. Thus, the said provisions empowers the Appropriate Government to grant permission.

37. In the present case, the second respondent is an organization of the Government of India. Ministry of power also approved the Project. The Project is for the larger interest of the public of our great nation. The transmission lines are planned to be erected from Raigarh of Chattisgarh to Pugalur, State of Tamil Nadu. The transmission lines are crossing through five major States across the country. Even in Tamil Nadu the transmission lines are being laid for the distance of about 345 km. This being the nature of the project, this Court is of an opinion that the writ petitioners have no say to obstruct the project, which is being implemented in the larger interest and for the development of our great nation. Consistent developmental activities of a welfare State is also a Constitutional Directive. Thus, the State is bound to implement the Welfare Schemes for the development of our great nation. Infrastructure facilities and all other developmental and technical activities are to be consistently improved in order to compete with all other countries across the globe. India, being a fast growing nation, cannot afford to suffer implementation of all such larger Welfare Schemes. The Welfare Schemes are once approved and if the schemes does not suffer from any Unconstitutionality or illegality, the Courts must be cautious in granting even any interim orders so as to cause an irreparable loss to the public interest as well as to the State exchequer. In the event of granting interim order or keeping the matter pending for an unspecified period or any postponement of all such Welfare Projects would further cause financial loss to the tax payers money. Delay in implementation of the projects would result in escalation in cost and such

escalation would affect the interest of the tax payers money. Thus, all such schemes, if tested, must be considered at the earliest possible and if there is no *prima facie* case made out by the writ petitioners, the grant of interim order also to be restrained so as to ensure the public projects are not stalled on account of the personal ideologies of any person. However, citizens may have their own ideas and views. No doubt, the ideas and views of individuals are also to be respected. However, the larger interest of the public alone must prevail over the individual ideas. Overlooking the opinion of the committee of the Experts can never be considered at all. The Courts are bound to consider the grievances of each and every citizen of this great nation. While considering the grievances of such citizen, there cannot be any compromise in respect of larger public interest as far as the implementation of the larger Welfare Schemes are considered. Thus, a balancing approach is to be adopted and principles of pragmatism are to be followed.

38. In the present Writ Petition, undoubtedly, transmission towers are being laid/proposed to be laid in the agricultural lands belonging to the writ petitioners. The Statute provides payment of compensation to the damage or loss if any caused. The quantum for compensation was arrived by the competent authority. If at all, the writ petitioners are aggrieved in respect of fixing of compensation, for the loss or damage, the petitioners are at liberty to approach the District Judge concerned for claiming compensation or enhancement or otherwise. Contrarily, the writ petitioners cannot obstruct the implementation of the scheme by stating that no consent has been obtained from them and such a consent is required under the law and it is an acquisition proceedings and the second respondent is the user of the land and transmission towers are commissioned without acquiring the

land. Considering the nature of the scheme under implementation, this Court is of an opinion, with reference to the provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885, that authorities competent are empowered to commission the transmission towers in the lands belonging to the writ petitioners and, if at all, the writ petitioners are aggrieved in any aspect, they are at liberty to approach the learned District Judge concerned for redressing their grievances in respect of claiming compensation alone. However, the project cannot be questioned by the writ petitioners on the ground that the project details are not furnished to them. For the purpose of commissioning the transmission towers, furnishing of entire projects details to the farmers are unnecessary and not contemplated under the Statutes. No purpose would be served even those documents are served on the writ petitioners. The writ petitioners have no locus standi to object the welfare schemes being implemented for the welfare of the citizen at large. Thus, the writ petitioners, even if not furnished with the documents, are not prejudiced as the scheme being implemented by virtue of the authority conferred under the provisions of the Statutes referred supra.

39. It is brought to the notice of this Court that the writ petitioners along with some other persons had indulged in filing number of cases before the Courts with an idea to stall the entire project. It is contended that CrI.O.P.No.28520 of 2018 was filed to forbear them from giving police protection in any manner aiding the Officials of the Power Grid Corporation Limited & the Revenue Officials in implementing the 800 KV Raigarh (HVDC Stn) - Pugalur HVDC Stn) HDVC Bipole link with MW capacity?, unless those Officials obtain enter~upon permission under the provisions of the Indian Telegraph Act, 1885 or Works of

Lincensees Rules, 2006? The said Crl.O.P was dismissed by this Court. This apart, even on earlier occasion, the petitioners filed writ petitions for a direction to dispose of the representation and the present writ petition is also challenging the order passed by the District Collector in proceeding dated 27.10.2018 for removal of the obstruction. Citing all these cases, the learned senior counsel appeared on behalf of the second respondent submitted that the writ petitioners are frequently filing petitions after petitions before one Court or before the other Court to achieve their ill motives. Thus, the petitioners are in the habit of filing cases before various Courts and attempting to stall the national level project of installing transmission towers from Raigarh, Chattisgarh to Pugalur, State of Tamil Nadu. The conduct of the petitioners in filing several cases for the purpose of causing an obstruction are to be deprecated and such conduct can never be encouraged by the Courts.

40. In respect of the order impugned passed by the District Collector, this Court is of the opinion that the District Collector had given an opportunity to the writ petitioners to submit their objections. However, as discussed in the aforementioned paragraphs, the District Collector is not an authority to modify the Route or to change the place. The Collector is empowered to remove the obstructions, if any, caused for the purpose of implementation of the Scheme of erecting transmission towers. Thus, the Authority of the Collector in this regard is restricted and shall be exercised only with reference to the provisions of the Electricity Act, 2003 and Indian Telegraph Act, 1885. Thus, the Collector has proceeded in accordance with the provisions of the above Acts. Though, the Collector has provided an opportunity, the same has not been fully utilised by the writ petitioners by providing their statements. Contrarily, the petitioners appeared

and refused to record their statements. This being the conduct of the writ petitioners, this Court is unable to accept the contention that the prior permission was needed from the writ petitioners and the opportunity also had not been given to the writ petitioners to put forth their grievances. When opportunity was provided in accordance with the provisions and the powers of the Collector under the Acts are certainly limited, the Collector cannot change the Scheme or modify the route already approved by the appropriate Government. The only course left open for the writ petitioners are to claim damages or just compensation manner by approaching the concerned District Judge by filing appropriate petitions under the provisions of the Act. This being the scope of the litigation before this Court, the writ petitioners have not established any acceptable grounds for the purpose of considering the relief as such sought for in the present Writ Petition."

11. In view of the legal principles adjudicated in the cases cited supra, this Court is of an opinion that the public welfare projects must be allowed to be implemented in its spirit. However, the Competent Authorities are bound to follow the procedures contemplated in the statutes and settle the full compensation to the persons who all are affected on account of the implementation of such projects.

12. Electricity being an essential one for all the citizens of our great Nation, the National level projects for transmission of

electricity is unavoidable and which all are necessary for the purpose of providing infrastructures and for developmental activities across the Country. Thus, stalling of the entire project of erecting High Tension Electricity Towers in the localities are not desirable. However, the Authorities Competent must follow the procedure of assessing the less damage to the owners of the agricultural land. While preparing the project report, the experts are also to keep in mind that the project must be prepared by causing lesser damage to the agriculturists, who all are affected on account of such erection of High Tension Electricity Towers in their respective agricultural land.

13. This Court is of an opinion that the project of erecting High Tension Electricity Towers are carried out for the purpose of providing electricity to various villages and for the other developmental activities and for industrial developments. Thus, stalling the project will affect the developmental activities of our great Nation. Under these circumstances, the respondents are directed to settle full compensation in the event of no objection from the land owners and if there is an objections, then the Collector has to conduct an enquiry and pass orders. Once the

permission is granted by the District Collector concerned, then the licensee is empowered to erect the High Tension Electricity Towers in accordance with the project.

14. In any event payment of the compensation to the affected person cannot be delayed as the same is mandatory under the provisions of the Electricity Act. Even in case of objections, and an order is passed by the District Collector, the admissible compensation shall be settled in favour of the land owners immediately and if any dispute arising on account of the payment of compensation, the aggrieved person is at liberty to approach the District Judge concerned for the purpose of ascertaining the just compensation in accordance with law.

15. With these observations, all these writ petitions stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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30.01.2019

Index : Yes / No
Internet: Yes / No
Speaking / Non speaking Order
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S.M.SUBRAMANIAM, J.

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To

- 1.The District Collector,
Erode District, Erode.
2. The Chairman
TANTRANSCO,
10th floor, NPKRR Maaligai,
144, Anna Salai, Chennai-600 002.
- 3.The Superintendent Engineer,
General Construction Circle,
TANTRANSCO,
Dr.Subbarayan Road,
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