

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No. 30124 of 2018
and

W.M.P.Nos. 35140 & 35144 of 2018

1. V.Shankar
2. V.Jayaraman
3. R.Raja
4. P.Munusamy
5. M.Ammasi
6. K.KannammalPetitioners

Vs.

1. The District Collector,
Dharmapuri District, Dharmapuri.
2. The Assistant General Manager,
Power Grid Corporation of India,
Tirupattur HDVC TLC,
No.185, TNHB phase - II,
Dharmapuri Main Road,
Tirupattur - 635601.Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ Order or Direction to call for the records of the Proceedings of the 1st Respondent in Na.Ka.No.16950/2018/B2 (previously Na.Ka.No:10687/2018/B2) and Na.Ka.No.10687/2018/B2 dated 27.10.2018 (served on 09.11.2018, 10.11.2018 & 12.11.2018) and quash the same, and consequently directing the 1st Respondent to consider the Petitioners' objections after furnishing the petitioner with the prior approval for the Project by the Central Government, Route Map of the Project, Government Approval, Route Approval, Angle Deviation, GPS Co-Ordinates, distances between the Towers, No. of Towers, Nature of Towers, Approval Survey, Paper Publication, Gazette Notification, Project Report, Social Impact Assessment/Report, Guidelines for Safety Measures, Documents relations to Crop Compensations & Compensation for diminution of Land Value with respect to the Implementation of the Pugalur to

Raigarh 800 KV Power Transmission Project in the lands of the petitioners and also giving the petitioners reasonable opportunity within a time frame fixed by this Court.

For Petitioners : Mr. V. Raghavachari
for M/s. Va Vu Si Vazhakagam

For Respondents : Mr. P.H. Aravind Pandian
Asst. by Mr. C.V.Shailandharan,
Government Advocate &
Mr. Akhil Akbar Ali,
Government Advocate for R1

Mr. R. Thiyagarajan, Sr. Counsel
for M/s. Aiyar and Dolia for R2

ORDER

The lis on hand is filed against the order of rejection passed by the District Collector, Dharmapuri District, in respect of the grievances of the writ petitioners challenging the national level project approved and being implemented by the second respondent/Power Grid Corporation of India.

2. The further relief sought for in the present Writ Petition is to direct the first respondent to consider the petitioners' objections after furnishing the petitioner with the prior approval of the Project by the Central Government, Route Map of the Project, Government Approval, Route Approval, Angle Deviation, GPS Co-Ordinates, Distances between the Towers, No. of Towers, Nature of Towers, Approval Survey, Paper Publication, Gazette Notification, Project Report, Social Impact Assessment/Report, Guidelines for Safety Measures, Documents relating to Crop Compensations & Compensation for diminution of Land Value with respect to the Implementation of the Pugalur to Raigarh 800 KV Power Transmission Project in the lands of the petitioners and also giving the petitioners reasonable opportunity within a time frame fixed by this Court.

3. The learned counsel appearing on behalf of the writ petitioners articulated the facts by narrating that the writ petitioners are the agriculturists and cultivating their lands in their locality. The petitioners are the owners of the agricultural lands in the Periyanaahalli Revenue Village of Karimangalam Taluk, Revenue Villages of Chelliyampatti, Alliyur of Palacode Taluk, Dharmapuri District, wherein the second respondent is implementing the transmission project by making arrangements to erect 800 KV Power Transmission Routes from Pugalur to Raigarh. Originally the towers were planned to erect

the High Tension Tower along with the adjacent dry lands. However, the route was suddenly changed without any intimation or survey and the second respondent arbitrarily and purposefully changed the alignment route of the Tower lines in order to safeguard the lands of politically sound and influential persons in that locality. It is contented that in order to safeguard the property of few individuals, the original route had been deviated and, therefore, the writ petitioners are constrained to move the present Writ Petition.

4. The learned counsel appearing on behalf of the writ petitioners emphasized that the right of the petitioners over their property is taken away without following the due process of law. The property right conferred on the writ petitioners is taken away by these authorities, namely, the Power Grid Corporation of India, without even providing an opportunity and furnishing the particulars sought for by the writ petitioners through their representations. The petitioners have submitted several representations to furnish the details of the project, Route Map and all other documents in relation to the implementation of the Project. However, the efforts taken by the writ petitioners went in vain and no particulars are provided to the writ petitioners till now. It is contented that the respondents are entering into the lands belong to the writ petitioners, without even obtaining any consent or information from the writ petitioners. Thus, the very Constitutional right provided under Article 300 A of the Constitution is violated.

5. The petitioners state that the provisions of the Electricity Act, 2003 and Telegraph Act, 1885 are misinterpreted by the respondents/Officials for their advantage so as to see that the Project is implemented without even obtaining the consent or by providing informations to the affected persons, who are all losing their right of the property. The petitioners were not even permitted to submit their grievances. The District Collector also had proceeded the enquiry unilaterally and concluded the same without even allowing the petitioners to vindicate their grievances. The petitioners further state that the entire proceedings of the District Collector were an empty formality and the spirit of the principles of Natural Justice ensured under the Constitution had been violated. The petitioners have no other option except by approaching this Court, in view of the fact that in the event of implementing the Transmission Project in their agricultural lands, their prospects in respect of cultivation will be affected. The respondents are constructing concrete blocks and commissioning transmission towers in the agricultural lands, which may cause greatest hindrance to the agricultural activities of the farmers of that locality. This being so, the respondents have not even taken care of the grievance of the writ petitioners even by

producing the Route map, Project details and other informations enabling the petitioners to understand in what manner the commissioning of the transmission towers would not affect their interest as well as their cultivation activities.

6 . The learned counsel for the writ petitioners urged this Court by stating that Section 67 of the Electricity Act, 2003 denotes provisions as to opening up of streets, railways etc. Section 67(1) states that

"A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as---

(a) to open and break up the soil and pavement of any street, railway or tramway;

(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes , other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity"

Referring the said provisions, the learned counsel for the petitioner emphasized that the prior consent of owner is mandatory as far as the licensee is concerned. In other words, without obtaining a prior consent from the owners of the land, the licensee cannot proceed with the implementation of the transmission project and the same would amount to violation of the provisions of the Electricity Act, 2003 itself. It is further contended that Section 68 of the Electricity Act, 2003 cannot be interpreted to the advantage of the respondents. This apart, The Works of Licensees Rules 2006 also stipulates licensee to carry out work in a particular manner. Those conditions and terms enumerated in the Rules are also not followed by the 2nd respondent/Power Grid Corporation of India. At the outset, the contention of the petitioners are that the 2nd respondent/Power Grid Corporation of India has not produced the Project details, Route map and other particulars in relation to the implementation of the High Voltage Transmission Scheme. The District Collector also had not provided any opportunity to the writ petitioners to putforth their grievances.

7. The District Collector herself was not aware of the project details and the documents were not even produced before the District Collector concerned. Thus, the entire implementation is in violation of the Act and Rules as well as the principles of natural justice.

8. The learned Senior Counsel appearing on behalf of the 2nd respondent/Power Grid Corporation of India disputed the contentions raised on behalf of the writ petitioners by stating that the writ petition is not maintainable. The Writ Petition is liable to be dismissed in limine on the ground that the writ petitioners have not established any legal right, so as to consider, the relief as such sought for in the present Writ Petition. Undoubtedly, the writ petitioners are the farmers of that locality and may be owning some agricultural lands in that locality. However, the authority of law conferred on the officials of the 2nd respondent/Power Grid Corporation of India, by way of a Statute, cannot be questioned by the writ petitioners in the present Writ Petition.

9. The learned Senior Counsel, at the first instance, referred Section 68 of the Electricity Act, 2003. Section 68 provides Overhead lines and the same reads as under.

" 68. Overhead lines--- (1) An Overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of Sub-Section (2).

(2) The provisions contained in Sub-Section (1) shall not apply-

(a) in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

(b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

(c) in such other cases, as may be prescribed.

(3) The Appropriate Government shall, while granting approval under Sub-Section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

(4) The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

(5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an Overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

(6) When disposing of an application under Sub-Section (5), an Executive Magistrate or authority specified under that Sub-Section shall, in the case of any tree in existence before the placing of the Overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Explanation- For the purposes of this Section, the expression "tree" shall be deemed to include any shrub, hedge, jungle growth or other plant"

Referring the above said provisions, the learned Senior counsel is of the opinion that the authorities competent, with the prior approval of the Appropriate Government, is empowered to install or kept installed the Overhead lines by implementing the transmission projects. In the present case, the project in question was approved by the Appropriate Government, namely, the Government of India, Ministry of Power, Central Electricity Authority, Power System Planning & Project Appraisal II Division, Sewa Bhawan, R.K.Puram, New Delhi on 24.09.2015. Pursuant to the approval granted by the Government of India, the 2nd respondent/Power Grid Corporation of India commenced implementation of the project as per the approval granted by the Government of India. The project is covered in between Raigarh of the State of Chattisgarh and Pugalur of the State of Tamil Nadu.

10. The learned Senior counsel informed that the transmission lines are crossing five States across the Country and more specifically, the cables are being laid for 345 Kilometers within the jurisdiction of the State of Tamil Nadu. This being the nature of the project, the writ petitioners cannot stall the entire project, which has already been commenced and almost in completion stage. It is contended that the projects reached final stage in respect of all other States and in respect of the State of Tamil Nadu also, it is partly completed and the balance works are yet to be completed.

11. It is brought to the notice of this Court that in respect of the approval originally granted to the Power Grid Corporation of India, The Ministry of Power, Government of India, in their letter dated 18.02.2016, ordered for the partial modification, which reads as under:

" In partial modification of the prior approval of the Government already granted for the scheme, the clause 6 (iii) may be read as given below:

"The implementing agencies shall abide by the provisions of Works of Licensee Rules, 2006 notified by the Government of India, Ministry of Power in the Gazette of India, extra-ordinary part-II, Section 3(i) dated 18.04.2006 (vide GSR 217 (E) dated 18.04.2006)". Provided that "nothing contained in this rule shall effect the powers conferred upon the licensee under Section 164 of the Electricity Act 2003."

12. According to the learned Senior Counsel, though the project had already been proceeded with and in advanced stage, on account of the present Writ Petition, the respondents are unable to complete the same. The learned Senior counsel referred to Section 164 of the Electricity Act, 2003, which provides exercise of powers of Telegraph Authority in certain cases and the same reads as under:

"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."

13. The Gazette published by the Government of India, on 24.12.2003, categorically enumerates that, in exercise of the power conferred by Section 164 of the Electricity Act, 2003, the Power Grid is hereby authorized to exercise all the powers vested in the Telegraph Authority under part III of the Indian Telegraph Act, 1885 in respect of the electrical lines or electrical plant established or maintained, or to be so established or maintained for the transmission of or for the purpose of telephonic or telegraphic communication necessary for the proper coordination of the works.

14. Relying on Section 164 of the Electricity Act, 2003 and the consequential Order passed by the Government of India, the learned Senior Counsel reiterated that the power conferred under the Statute is with the Authority of law. Such an Authority of law conferred by way of a Statute cannot be diluted or taken away, more specifically, while implementing such welfare projects in our great nation. The welfare projects are being implemented in the interest of public at large and such projects, which provides benefit to the larger sector of the public, cannot be stalled by few persons on certain flimsy grounds. The public interest is of paramount importance and, therefore, such projects are allowed to be completed in all respects without any delay. The delay may cause escalation in project cost and there is a possibility of revenue loss to the Corporation also. With reference to the Indian Telegraph Act, 1885, the learned Senior Counsel cited Section 10 of the said Act, which enumerates the power for telegraph authority to place and maintain telegraph lines and posts. The same reads as under-

"10. Power for telegraph authority to place and maintain telegraph lines and posts:- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property.

Provided that--

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority' and

(d) 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 b reason of the exercise of those powers."

15. Section 16 of the Indian Telegraph Act, 1885 denotes exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority and the same is extracted hereunder:-

"16. Exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority---

(1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that Section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under Sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed

to have committed an offence under Section 188 of the Indian Penal Code (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under Sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under Sub-section (3), or Sub-section (4) shall be final.

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same"

16. Relying on the said provision, the learned Senior Counsel is of the opinion that it is not required under law to obtain any prior consent or permission from the land owners for the purpose of commissioning the transmission towers in a particular locality, when it is contemplated under the provisions of the Statute for grant of compensation. Thus, the owners have the vested rights in respect of the damages, if any caused while implementing the project by the competent authorities. Thus, the prior consent is not contemplated and the compensation alone is provided. Thus, it is not as if the petitioners can raise objections in respect of commissioning of the transmission towers in their lands. The authorities competent are already vested with authority of law in commissioning all such transmission towers in that locality. However, if the aggrieved persons are of the opinion that on

account of such commissioning of transmission towers, if any damage is caused to the property or to the agricultural produce, then suitable compensation can be claimed and the authorities notified under the Act can consider the claim of all such aggrieved persons and grant compensation by following the procedures contemplated and in commensuration with the market value or otherwise. The District Judge is the authority to grant such compensation under Section 16 of the Indian Telegraph Act, 1885. Thus, the only option left open to the writ petitioners are to approach the authority competent, as notified under the Act, for seeking compensation.

17. The counter affidavit filed on behalf of 2nd respondent also enumerates that pursuant to the approval/sanction of the said Transmission Line Project, the respondent Corporation has surveyed the area to ascertain the most techno-economically feasible route for drawing up of the transmission line, taking into account various parameters such as:

- a. Minimal impact on the environment
- b. Avoiding inhabitant area to the extent possible.
- c. Least impact on the crop and plantation.
- d. Crossing the EHT line at an angle as close to 90 degree
- e. Crossing the National Highways at an angle of 90 degree etc.
- f. Avoiding places of worship etc.
- g. Avoiding Natural water bodies and Parks, etc.
- h. Most economical route

18. A Tower in location No. 44/0 was proposed to be erected in the lands belonging to the petitioners 1 and 2 and two other land owners. The foundation work in Location No.44/0 was completed on December 2017. It is pertinent to point out here that compensation towards damages caused to the standing crops during the execution of the works was paid to the 1st Petitioner to the tune of RS.35,000/- on 05.01.2018 through NEFT and a sum of Rs.7,702/- was paid to the 2nd petitioner through NEFT on 05.01.2018. The compensation was also paid to other land owners on the same day in respect of Location No.44/0. Out of 4 legs of the tower in location No.44/0, one leg each falls in the lands belonging to other two owners. The towers in the preceding and succeeding locations viz., 42/0 and 45/0 have already been erected during the last week of September 2018. Insofar as 3rd and 4th Petitioners are concerned, a tower in Location No.43/0 is proposed and excavation work for the erection of tower has been completed. The erection of tower in the preceding location viz., 42/0 has already been completed. Likewise, a tower in Location No.56/0 is proposed in the land

belonging to the 5th Petitioner and insofar as the 6th Petitioner is concerned, one tower in Location No.55/0 is proposed wherein, excavation works have been completed. It is relevant to note that as the preceding location, viz., Location No.54/0, is the crossing railway line connecting Salem and Dharmapuri, the transmission line has to cross the railway line as close to 90 degree angle. On account of the same, the possibility of altering the locations viz., Location No.55/0 and 56/0 is not possible.

19. Narrating the above Project details and the experts opinion, the learned Senior counsel emphasized that the deviation of the project is impossible and the revised Route has been approved based on the opinions furnished by the Expert Committee of the Power Grid Corporation of India. It is further contended that such Experts opinion offered by the Committee of experts can never be interfered with even by the Courts, unless the experts opinion is found prima facie perverse or not in consonance with the provisions of the Statute or otherwise in violation of the Constitutional principles. In all other respects, the experts opinion offered by the Committee is binding on the Courts and the Courts, being not an expert body, cannot scrutinize or made a finding in respect of those opinions offered by the Experts.

20. The learned Senior Counsel contended that petitioners have submitted representations to the first respondent on 22.06.2018, 27.06.2018, 23.06.2018 and 25.06.2018 objecting the erection/laying of towers/transmission lines in their lands. In this regard, they filed W.P.Nos. 17043,17044,17045,17047,16127 and 16128 of 2018 for issuance of a Writ of Mandamus directing the first respondent to consider their representations. This Court passed an order on 06.07.2018 directing the first respondent to consider the pending representations made by the writ petitioners within a period of two weeks. Pursuant to the order of this Court, the first respondent called upon the first petitioner and the second respondent to appear for an enquiry on 30.08.2018. On 30.08.2018, even though the petitioners appeared for the enquiry, they refused to give oral statement. In order to afford an opportunity to the petitioners, the first respondent called upon the petitioners to appear for the enquiry held on 25.09.2018. The second respondent also filed this petition on 25.09.2018 before the first respondent for removal of obstructions of the petitioners at tower location Nos. 43/0, 56/0 and 57/0 under Section 16 (1) of Indian Telegraph Act, 1885. Thus, the complaints submitted by the writ petitioners were properly considered and disposed of by the District Collector by affording opportunity to the writ petitioners. However, the writ petitioners have evaded to avail the opportunity provided with some motive. Thus, the conduct of the

writ petitioners in not submitting their objections cannot be countenanced nor be taken in favour of writ petitioners.

21. The learned Senior counsel relied upon the judgment of the Honourable Division Bench of this Court in SRI.VIGNESH YARNS PVT. LTD. VS. S. SUBRAMANIAM [(2013) 1 MLJ, wherein, in paragraph 15, it has been observed as follows:

" 16. From the aforesaid orders, it is evidently clear that the only grievance made by the petitioners in those writ petitions was that the respondent-electricity authorities have not taken permission to enter upon their property from the District Collector/Magistrate as prescribed by law. It also reveals from the above orders that the work was in progress and the only direction was to proceed with the work after obtaining appropriate orders from the District Collector/Magistrate under the provisions of the Indian Telegraph Act, 1885. The District Collector, however, in his impugned order dated 18.07.2011 proceeded on the assumption that he was directed to conduct an enquiry and to give opportunity to the petitioners and the officials of the Electricity Board to express their opinion with regard to the feasibility of proceeding with the erection of transmission line on the original route so decided by the authorities of the Board. The District Collector further observed in his impugned order that since there were objections for taking electric line and erecting electric poles, the Revenue Divisional Officer has to conduct an enquiry and file a detailed report after making necessary survey. The Revenue Divisional Officer in his report has given his own suggestion as to the land over which the transmission line should go. It was categorically brought to the notice of the District Collector that except the work of erecting 9 power towers in the area of Sundakampalayam and Nambiyampalayam and erection of 400 K V High Voltage electric routes from Mettur to Arasur, all other works leading to erection of power towers on both sides are at the stage of completion. The District Collector was also informed that for the purpose of distribution of electricity to the public 600 M W capacity power tower is to be erected at Mettur , from where electric

supply has to be taken to the sub-station at karumathampatti having capacity of 400 K V, that the formation of electric route has to be completed by the end of July 2011, and that if the works undertaken at Mettur Thermal Power Station and the works relating to formation of electric routes are not completed, then the TNEB will be forced to a situation of immobilizing its funds to the tune of Rs.140 crores. In spite of all these facts, the District Collector, Tiruppur has granted permission to the TNEB for the erection of power tower and electricity lines through different route. In our considered opinion, the District Collector is not vested with such power either under Section 16 or 17 of the Indian Telegraph Act, 1885. Learned single Judge has rightly held that the power of the District Collector is more in the nature of execution of the decision taken under Section 10 of the Indian Telegraph Act, 1885 or under Sections 67 and 68 of the Electricity Act, 2003. We are also of the definite opinion that the District Collector has no authority to change the alignment and to give a new route for transmission of the electricity, especially when the experts of the Electricity Board asserted that the original alignment proposed was the best alignment in the interest of the public at large. It has not been disputed that pursuant to the earlier orders passed by this Court, the Board officials approached the District Collector to give permission for studying the feasibility of the alternative routes, and after due survey, they narrowed in on two possible routes and also suggested the merits and demerits of both of them. The Board, however, asserted before the District Collector that the route originally approved by the Board was more feasible and ought to be adopted as it was along the existing panchayat road. It has not been disputed by the appellants that the District Collector in his public hearing/meeting had orally declared that the Board's original approved route would only be followed. But, in the meantime, the District Collector was transferred and the incoming District Collector again called for a meeting and by passing the impugned order, changed the alignment and

directed to follow the second route. That being the position, the incoming District Collector ought to have followed the decision taken by the then District Collector approving the original route."

22. In the said judgment, the Honourable Division Bench has categorically reiterated that the District Collector is not vested with such powers either under Sections 16 or 17 of the Indian Telegraph Act, 1885 and the learned single Judge has rightly held that the power of the District Collector is more in the nature of execution of the decision taken under Section 10 of the Indian Telegraph Act, 1885 or under Sections 67 and 68 of the Electricity Act, 2003. Thus, the Honourable Bench is of the definite opinion that the District Collector has no authority to change the alignment and to give a new route for transmission of the electricity, especially when the experts of the Electricity Board asserted that the original alignment proposed was the best alignment in the interest of the public at large.

23. Even in paragraph 19 of the said judgment, the Division Bench observes that as per the Scheme of the Act, the District Collector was not empowered either under Section 16 or Section 17 of the Telegraph Act, 1885 to decide upon the route and his power was more in the nature of the execution of a decision taken under Section 10 of the Act or under Sections 67 or 68 of the Electricity Act, 2003.

24. The Honourable Supreme Court in the case of POWER GRID CORPORATION OF INDIA LIMITED VS. CENURY TEXTILES AND INDUSTRIES LIMITED AND OTHERS [(2017) 5 SCC 143] has settled the legal principles. Paragraphs 12 of the judgment is extracted hereunder:

" 12. We may mention here that two more writ petitions were filed in the High Court: one by Mr Ram Naresh and the other by Ajay Munjal Memorial Trust. Insofar as the case of Mr. Ram Naresh Singh is concerned, 524 towers are constructed in District Sasaram in the State of Bihar and only one tower is placed on the land belonging to Respondents 1 and 2 therein. The High Court of Patna has decided the case in favour of Respondents 1 and 2 on the ground that no notice was issued to them to seek their prior consent. Likewise, in the case of Ajay Munjal Memorial Trust, transmission lines laid down by the Power Grid covered the area of 418 km. One such tower is placed on the land belonging to the said Trust. Here also, the challenge was made by the appellant on the ground that their prior

consent was not taken. However, in this behalf, the High Court of Jharkhand has repelled the challenge. It is for this reason that Civil Appeals Nos.8951 of 2011 and 8342 of 2009 were also heard along with the main case and the counsel appearing for the respective parties made their submissions, which have also been taken into consideration."

25. In the aforesaid paragraph, the Hon'ble Supreme Court observes that the finding of the High Court of Patna to the effect that no notice was issued to them to seek a prior consent is unwarranted.

26. In paragraph 15 of the said judgment, the Hon'ble Supreme Court has reiterated that Sections 68 and 69 of the Electricity Act, 2003 as well as Rules 3 and 10 of the Works of Licensees Rules, 2006 have been violated in laying down the Overhead lines, and therefore, the High Court erred in law in permitting the same.

27. More importantly, in paragraphs 19 to 22, the Hon'ble Supreme Court considered the Works of Licensees Rules, 2006 and Section 164 of the Electricity Act, 2003, which reads as under:

"19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:

"3. Licensee to carry out works- (1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;"

20. In the instant case, the aforesaid Rule is not applicable in view of Section 164 of the Electricity Act, 2003, which reads as under:

"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 coordination 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 is not in dispute that in exercise of powers under the aforesaid provision, the appropriate Government has conferred the powers of telegraph authority vide Notification dated 24-12-2003 exercisable under the Telegraph Act, 1885 upon the Power Grid. It may also be mentioned that a Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. Power Grid is a Central transmission utility and is, therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885, including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most essential requirements for growth and development of any country, economy and the well-being/progress of the citizens. The legislature has not permitted any kind of impediment/obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it

is, for laying down the electricity transmission lines.

22. Powers of the Telegraph authority conferred by Sections 10, 15 and 16 of the Telegraph Act, 1885, stand vested in and are enjoyed by the Power Grid. These provisions are reproduced below:

" 10. Power for telegraph authority to place and maintain telegraph lines and posts.- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that-

(a) the telegraph authority shall not exercise the powers conferred by this Section except for the purposes of a telegraph established or maintained by the Central Government, or to be so established or maintained;

(b) the Central government shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) 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.

15. Disputes between telegraph authority and local authority.- (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority

refusing the permission referred to in Section 10 clause (c), or prescribing any condition under Section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under Section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the Central Government may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the Central Government; and the order of the Central Government shall be final.

16. Exercise of powers conferred by Section 10, and disputes as to compensation, in case of property than that of a local authority.- (1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under Section 10 clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to

be sufficient or the amount has been determined under sub-Section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section(4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

28. In Paragraph 21 of the judgment cited supra, it is held that the Central transmission utility (CTU) is a deemed licensee under the second proviso to Section 14 of the Electricity Act, 2003. It is further held that Power Grid is a Central transmission utility (CTU) and is therefore, a deemed licensee under the Electricity Act, 2003. This coupled with the fact that Power Grid is treated as authority under the Telegraph Act, 1885, it acquires all such powers which are vested in a telegraph authority under the provisions of the Telegraph Act, 1885 including power to eliminate any obstructions in the laying down of power transmission lines. As per the provisions of the Telegraph Act, 1885, unobstructed access to lay down telegraph and/or electricity transmission lines is an imperative in the larger public interest. Electrification of villages all over the country and availability of telegraph lines are the most established requirement for growth and development of any country, economy and the well-being/progress of the citizens.

29. In paragraphs 23 to 26 of the judgment, the Apex Court has further held as follows:

"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."

25. We, thus, have no hesitation in rejecting the argument of the writ petitioner that the impugned action of the Power Grid was contrary to the provisions of the Electricity Act, 2003.

26. We also do not find that the action of the Power Grid, in the given circumstances, by not shifting the transmission lines was arbitrary. From the facts noted above, it becomes apparent that not only it was unfeasible to change the alignment as almost entire work had already been completed by the time the writ petitioner started protesting against this move, even otherwise, the Power Grid has given sufficient explanation to point out that all relevant factors/aspects were kept in mind while laying down the impugned transmission lines. Such transmission lines had to be in straight line to the extent possible for eliminating loss of transmission. It is also explained that electricity transmission is usually laid or crossed over agricultural land where minimum extent of land gets utilized for erecting towers and where agricultural activities are not prejudiced/obstructed in any manner. The purpose is to avoid buildings, religious places, ponds, etc. While laying down these transmission lines. It is only when it becomes inevitable that towers are placed on the private lands to the minimum and least extent possible. That is what was tried to achieve in the instant case. Another important factor,

which needs repetition at this stage is that no blasting is permissible within 300 m from the 400 kv line (already existing) or the tower structure. Mining of limestone can be taken up by adopting the methods other than use of explosive/blasting - without damage to the tower foundation/tower structure or the line, which can be accomplished by using jack hammer/pneumatic hammer with compressor so as to avoid any damage to the line or tower. This aspect has also been taken note of by the learned Single Judge of the High Court in the judgment dated 11.03.2008. The Division Bench did not differ with any of these findings.

Accordingly, Civil Appeal No. 10953 of 2016 preferred by the writ petitioner stands dismissed."

30. More importantly in para 28, the Honourable Supreme Court of India concluded that, if the writ petitioner therein feels that he is entitled to any compensation, the appropriate course of action is to file a suit before the District Judge concerned for this purpose. It would also be apt to point out on this stage that the Central Government has framed guidelines dated 15.10.2015 in this behalf which interalia provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would also be open to the writ petitioner to avail the remedy as per the said guidelines.

31. In respect of Civil Appeal No.8342 of 2009, the Supreme Court of India concluded that " The appellant in this case also raised the issue of taking prior consent from it, as the owner of the land, before laying electricity transmission line. This argument has been rejected by us while dealing with the appeal of CENTURY TEXTILE & INDUSTRIES LIMITED. Accordingly, this appeal is also dismissed."

32. The learned Senior counsel appearing on behalf of the Power Grid Corporation of India has shown certain photographs wherein, the Transmission Towers are already erected and are in usage. Such photographs are placed before this Court in order to establish that even after commissioning of those transmission towers, the agricultural activities in that particular locality is continuing and the farmers are continuing their irrigation activities without any hindrance. Thus, it is

only the usage and the second respondent has not acquired any land belonging to the writ petitioners or as a matter of fact from any land owners. The second respondent is only the user and they are commissioning the Transmission Towers by erecting poles. The height of the tower is approximately about 70 metres and therefore the erection of the transmission tower would in no way affect the agricultural activities of the petitioners or any other farmers in that locality. Thus, the apprehension raised by the writ petitioners are imaginary and they are setting out their case based on certain presumptions and assumptions. Thus, the Writ Petition deserves to be rejected.

33. The learned Additional Advocate General appearing on behalf of the first respondent/District Collector also disputed the grounds raised by the writ petitioners. The learned Additional Advocate General contended that the writ petitioners though appeared before the District Collector refused to provide their statements. Notices were issued to the writ petitioners by the District Collector in advance informing the date of enquiry. In spite of that, the writ petitioners had not availed the opportunity by recording their submissions. Contrarily, they submitted several representations stating that they want the entire Project details, the nature of the Project, the material used and the Route map, etc. The entire particulars relating to the whole Project cannot be furnished to the writ petitioners in view of the fact that the State has not even proposed to acquire any lands belongs to the writ petitions and it is only the users right to be ascertained with reference to the Statutes and, therefore, the question of furnishing all those technical details to the writ petitioners would not arise at all. Right to use the property for erecting transmission poles is a power conferred under the Statute by the Appropriate Government and, therefore, such a power conferred by way of a Statute can never be objected by the writ petitioners for the purpose of delaying the project which is to be done in the interest of the public at large. Larger interest of public is of the paramount importance, when the schemes are being implemented by the State. The machinery of the State is duty bound to clear the objections in all respects enabling the State Machinery to implement the public projects. The public projects are being implemented for the welfare of the larger sector of the people. In the present case, it is for providing electricity power supply to the citizens of our great nation. Electricity is an essential service for a growing world. People at present cannot imagine a life without electricity. Electricity becomes part and parcel of our life. Providing electricity to the villages and to all the citizens are the Constitutional perspective. Thus, the welfare State is bound to provide such essential services and the minimum required facilities to all the citizens equally and

without any discrimination. This being the Constitutional perspective and also the directive, there is no reason to obstruct all such welfare projects being implemented by the State for the purpose of public welfare.

34. In the present case, the learned Senior counsel appeared on behalf of the second respondent could able to establish beyond doubt that even after the erection of the transmission towers, the agricultural activities are being performed in the lands. In other words, erection of transmission poles will not obstruct the irrigation activities in that particular locality. A very small area of the land is utilized for erecting towers for commissioning transmission cables. Thus, the project under progress cannot be equated with the acquisition proceedings. It is not an acquisition and it is only the erection of transmission towers by exercising powers under the provisions of the Indian Telegraph Act, 1885 and the Electricity Act, 2003. This being the legal position, the very objections raised by the writ petitioners are untenable and are liable to be rejected.

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 Crl.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.

41. Accordingly, the Writ Petition is devoid of merits and stands dismissed. No Costs. Consequently, Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

mrn/kmm

To

1. The District Collector,
Dharmapuri District, Dharmapuri.
2. The Assistant General Manager,
Power Grid Corporation of India,
Tirupattur HDVC TLC,
No.185, TNHB phase - II,
Dharmapuri Main Road,
Tirupattur - 635601.

+2cc to M/s.Va Vu Si Vazhakagam, Advocate SR.No.84969, 84403

+1cc to M/s.Aiyar & Dolia, Advocate SR.No.84511

+1cc to Government Pleader SR.No.85133

W.P.No. 30124 of 2018

RSI (CO)

GMV (04/01/2019)

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