

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.16716 of 2017

O R D E R:

Heard counsel for the petitioner and Sri N.Siva Reddy,
Standing Counsel appearing for respondents 2 to 5.

2. Petitioner is the owner of Acs.4.05 cents in survey Nos.88/2 and 98/1 of Thimmapuram village, Dwarakatirumala Mandal, West Godavari District, which he purchased under registered Sale Deed Document No.3581 of 2011.

3. Petitioner applied for a school building plan and got it approved on 15.03.2017. Petitioner contends that in April, 2017 respondents 2 to 5 came to his land and started measuring track and marking land and trees with colours stating that there was a proposal to lay 400KV line through the land of the petitioner and one of the High Tension Towers would be located in petitioner's land.

4. Petitioner contends that his consent was not obtained to lay the tower and it was possible for the respondents to alter the alignment of the towers, so that no tower is located in petitioner's land.

5. Counter affidavit is filed by the respondents contending that in exercise of power conferred under G.O.Ms.No.115 Energy Department dt.07.10.2003, the Government of

Andhra Pradesh had notified an approved scheme in A.P. Gazette Extraordinary dt.04.03.2013 proposing to augment the transmission system for evacuation of power from M/s Hinduja National Power Corporation Limited and the said line is passing from 400 KV twin moose DC line from 400/220 KV Vemagiri Sub-station in East Godavari District to the newly constructed Kamavarapukota Sub-Station in West Godavari District. It is stated that Notification inviting objections were published in the Gazette as well as in Andhra Jyothi Telugu Daily news paper and Indian Express English news paper on 28.02.2013 but no objections were received. It is also contended that preliminary survey was completed and as per the same, one tower falls in the petitioner's land; there are 22 tower locations preceding the tower to be erected in the petitioner's land and 10 tower locations succeeding to it continuously; and all the other tower locations except the one in petitioner's land have been completed, since the petitioner objected to erection work in his land.

6. It is also stated that petitioner's request for change of alignment was considered by the Assistant Executive Engineer, 400KV/Construction, SD.II Vijayawada, and technical difficulties in changing the alignment were informed to him.

7. It is also stated that a Notice dt.22.02.2017 was dispatched to the address of the petitioner informing that a

tower is going to be erected in her land and compensation for land, crop and trees if any will be paid, but it was returned with endorsement 'Door Locked'. It is also stated that there was an inspection of the field staff of A.P. Transco on 10.04.2017 in the presence of the father of the Writ Petitioner, and that the petitioner and her father were aware since March, 2016 of the location of tower in petitioner's land.

8. The respondents also relied upon the order dt.24.07.2018 in W.P.No.20317 of 2018 wherein this Court considered Section 164 of the Electricity Act, 2003 and the judgment of the Supreme Court in ***Power Grid Corporation of India Ltd., v. Century Textile and Industries Ltd., and others***¹.

9. I have noted the contentions of both sides.

10. The Supreme Court of India in ***Power Grid Corporation of India Ltd.***'s case(1 supra) held that a licensee, in whose favour there is a Notification under Section 164 of the Act, need not obtain prior sanction of the owner or occupier of the building or land on which the electrical transmission lines are being laid by the licensee under the said Act. It also held that the Works of Licensees Rules 2006 do not apply.

¹ 2017(5) SCC 143

11. Therefore, the contention of the petitioner that prior notice has to be given to her before decision was taken to lay a transmission tower in her land cannot be countenanced.

12. As regards the plea about possible change of alignment raised by the petitioner, the fact remains that no objections were filed by the petitioner to the alignment, which was notified in the Andhra Jyothi Telugu Daily and Indian Express English daily news papers on 28.02.2013.

13. It is also not disputed by the counsel for petitioner that 22 tower locations preceding the tower location in the petitioner's land and 10 tower locations succeeding to it continuously have been completed.

14. In this scenario, it would be difficult to change the alignment.

15. However, it is not disputed by the respondents that as per provisions of Section 16 of the Telegraph Act, 1885 (which provides for determination of disputes as to payment of compensation by the jurisdictional District Judge), if the petitioner is not satisfied with the compensation offered by the respondents for laying the high tension Z type tower through her land, petitioner can make an application under Section 16 (3) of the Telegraph Act, 1885 and seek appropriate relief from the Court of the District Judge, if she

is not satisfied with the compensation offered by the respondents.

16. Accordingly, the Writ Petition is disposed of directing the petitioner to make a claim before the respondents seeking compensation for loss of usage of property, etc., and the respondents shall consider the same and fix appropriate compensation payable to the petitioner within six weeks from the date of receipt of a copy of this order. Petitioner is also granted liberty to avail the remedy under Section 16 (3) of the Telegraph Act, 1885 read with Section 164 of the Electricity Act, 2003, in the event, she is dissatisfied with the compensation offered to her by the respondents. No order as to costs.

17. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

16th August, 2018.

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