

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 127

CR-6834-2018 (O&M)

Date of decision : 10.10.2018

Ajit Singh

..... Petitioner

VERSUS

Gurgaon Palwal Transmission
Ltd. and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Z. S. Chauhan, Advocate, for the petitioner.

Mr. Navmohit Singh, Advocate, for the caveators/respondents.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 22.01.2018, passed by the Civil Judge (Senior Division), Kanina (for short, the Trial Court) through which an application filed by the petitioner under Order 39 Rules 1 and 2 CPC has been dismissed. Also under challenge is the order 12.09.2018, passed by the Additional District Judge, Narnaul (for short, the Appellate Court), dismissing the appeal filed by the petitioner against the aforesaid order dated 22.01.2018.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit seeking therein permanent injunction to restrain the respondents, who were defendants in the suit, from laying a 400 KV power line shown by the petitioner in red colour in the site plan attached with his plaint as according to him the power line was being laid above or dangerously close to his house and poultry farm. It was further pleaded that the electricity line being of high power would make noise which would make the petitioner's life

miserable as also would put his and his family's life in danger. Alongwith his suit, the petitioner filed an application under Order 39 Rules 1 and 2 CPC seeking interim stay. On being put to notice of the petitioner's suit as also his prayer for interim stay, the respondents appeared before the Trial Court and filed a written statement through which the petitioner's claims were rebutted. It was stated that the petitioner had annexed a wrong site plan; the respondents had been duly authorised by the Government of India to instal the electricity/power line in question; only after carrying out an extensive survey by experts in the field were the respondents in the process of laying the electricity lines which were being laid for the betterment of supply of electricity in the States of Haryana, Rajasthan and Uttar Pradesh; the particular line qua which the petitioner had filed the suit was for transmission of electricity between Neemrana in Rajasthan and Dhanonda in Haryana; the petitioner's house and poultry farm were at least 30-32 meters away from the centre point of the proposed electricity lines and from the end of the transmission lines at least 18 meters away.

After holding the respondents to be duly authorised by the Government of India under Section 164 of the Electricity Act, 2003 (for short, the Act) to lay the overhead transmission lines, the Trial Court dismissed the petitioner's application for interim stay on the ground that the photographs and the survey marks produced by the respondents clearly depicted that the transmission lines were not being laid over or dangerously close to the petitioner's house or poultry farm. The Trial Court was further of the view that the petitioner had not been able to make out any *prima facie* case in his favour or show any injury to be suffered by him if the overhead proposed transmission lines were laid. The Trial Court further

went on to hold that under Section 10(d) of the Indian Telegraph Act, 1885 the overhead electricity transmission lines could be laid without the landowner's nod and in this regard, the only remedy available to the landowner was to seek compensation.

The petitioner challenged the aforesaid order dated 22.01.2018, passed by the Trial Court, by way of an appeal which was also dismissed after holding that neither the petitioner had made out any *prima facie* case nor had he shown to the Court that he would suffer any loss or injury on the laying down of the overhead electricity lines.

Learned counsel for the petitioner submitted that both the Trial Court as also the Appellate Court erred in rejecting the prayer made by the petitioner seeking interim stay as according to him the overhead transmission lines were above or dangerously close to the petitioner's house and poultry farm which would not only endanger his business but also his and his family's life. It was further submitted that the respondents were violating Rule 80 of the Indian Electricity Rules, 1956 (for short, the Rules) as the minimum distance prescribed therein was not being maintained by them between the buildings in question and the transmission lines. Lastly, it was contended that the survey report on which the respondents were relying had been withheld from the Court and thus, in this regard an adverse inference should be drawn against them.

Learned counsel for the caveators/respondents countered the above submissions made by learned counsel for the petitioner by contending that for the grant of interim stay the petitioner was required to show that he had a *prima facie* case; balance of convenience was also in his favour and that he would suffer irreparable loss if no stay was granted. According to

him, the petitioner has not made out any *prima facie* case as he has not even shown as to what is the exact distance between the proposal overhead transmission lines from the petitioner's house or poultry farm. It was further submitted that the petitioner has also not shown any balance of convenience in his favour as the laying of overhead transmission lines was in public interest which would certainly over rule any private interest of the petitioner and that irreparable loss has also not been shown. It was still further submitted that the overhead transmission lines were being laid by the respondents under the authority given by the Government of India under Section 164 of the Act and that these lines were a part of the Inter State Transmission System between three states i.e. Rajasthan, Haryana and Uttar Pradesh. So far as the transmission line in question was concerned, the same was to link Neemrana in Rajasthan to Dhanonda in Haryana and comprised of 111 towers out of which 109 had already been installed and the non-installation of the tower in question had brought the entire work to a stand-still. Reliance was also placed on the following judgements of this Court: -

1. *Harbans Singh and others vs. Punjab State Transmission Corporation Ltd. and others*”2018 (189) PLR 604, CWP-25966-2017, decided on 06.12.2017;
2. *M/s Power Grid Corporation of India and another vs. M/s Gujarat Enviro Protection & Infrastructure Haryana (Pvt.) Ltd. and others*; CR-3444-2018, decided on 29.05.2018;
3. *Kanwar Singh vs. Union of India and others*; CWP-7902-2011, decided on 19.07.2011; and
4. *Sadhu Singh vs. Punjab State Electricity Board and another* RSA-3975-2010, decided on 25.03.2014.

On a perusal of the record the respondents are found to have been

duly authorised by the Government of India to create and instal a 400 KV GIS Station in the areas of Gurgaon and Palwal and that such project is a part of the Inter State Transmission System being set up to augment supply of electricity in the States of Rajasthan, Haryana and Uttar Pradesh. The transmission line in question links Neemrana in Rajasthan to Dhanonda in Haryana and comprises of 111 towers out of which 109 have already been installed. It is further revealed that the route of the transmission lines has been laid out after extensive surveys conducted by experts.

The respondents have clearly stated in their written statement that the clear distance between the centre point of the proposed tower in question and the petitioner's house or poultry farm is at least 30 meters and that from the outer corridor of the transmission lines such distance is at least 18 meters. This statement of the respondents remains uncontroverted as no rejoinder has been filed by the petitioner. Further, a perusal of the plaint and the application filed by the petitioner for interim stay shows that not even an averment has been made by the petitioner therein with regard to the exact distance between the petitioner's house or poultry farm and the proposed transmission lines/tower.

Learned counsel for the petitioner sought to argue that the transmission lines were yet to be laid and therefore the exact distance between them and his house or poultry farm could not be given. Such argument does not merit acceptance as it is the petitioner who has filed a site plan alongwith his plaint depicting therein as to where the proposed tower and the electricity lines are being laid. Thus, the petitioner has not been able to establish a *prima facie* case in his favour.

Rule 80 of the Rules permits the laying of high voltage

transmission lines at a horizontal distance of 5.5 meters between the conductor and the immovable property. The unrebutted pleadings by the respondents clearly depict that the distance between any of the petitioner's properties from the conductor is at least 18 meters. Thus, prima facie no violation of any rule is also found.

So far as the balance of convenience is concerned, this Court has no hesitation in holding that the same does not lie in favour of the petitioner. The project in question is being set up in public interest as the same is for building up of infrastructure which would ultimately benefit the public at large in fulfilling the unending demand of power generation. Priority has to be given to public interest over private interest.

The petitioner has also not been able to show either before the Trial Court or the Appellate Court as also before this Court as to how irreparable loss would be caused to him as no material has been placed on the record to show as to how exactly the proposed transmission lines are going to affect the lives of the petitioner and his family members.

As per the law laid down by a Division Bench of this Court in "*Harbans Singh's* case (supra), a decision to mark the route for laying of electricity lines is highly specialised and technical. Such route may run into hundreds of kilometers passing through the land owned by different owners. It may not be possible to hear all the owners and the only right that the landowners have is to get compensation. The project of laying of electricity lines being for creation of infrastructure, no hearing is to be provided to the landowners on whose land the towers are to be installed. It was further held that it would be unreasonable to confer rights on the landowners of lands to suggest alternative routes because if such a process is adopted the project

would never be completed. The relevant portions of the judgement, read as under: -

“4. Primary contention raised by learned counsel for the petitioners is that they were not afforded proper opportunity to raise objections or make suggestions to the route adopted for erecting high power lines as the notification did not mention necessary details. In terms of Section 164 of the Electricity Act, 2003, powers can be exercised by the licensee under the Act for the purpose of erection of transmission. Section 10 of the Act authorizes the authority to place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property.

5. Proviso (b) to Section 10 of the Act makes it abundantly clear that while erecting lines, the authority does not acquire any right other than that of user in the property, which is subject to payment of compensation. In the case in hand as well notification dated 22.2.2017 has been issued for laying transmission lines on the route as mentioned therein.

6. As has been observed in a judgment by the Division Bench of Nagpur Bench of Bombay High Court in Vivek Brajendra Singh vs State of Government of Maharashtra and others 2012 (4) BCR 116, there is no hearing contemplated against laying of lines. A decision to mark route for laying electric line is a highly specialized and technical. The route may be running into hundreds of kilometers passing through land owned by different owners and it may not be possible to offer hearing to all the owners, as only right to use small-small of portions of land on which towers are erected, is acquired. The project being of important nature and creation of infrastructure, the Parliament has not provided for any notice of hearing at that stage. It was further found unreasonable to confer right on the owners or occupiers of the land on the route to suggest alternates. If that process is adopted, the project will never be completed as any such decision would be subject to judicial review and the State or its functionaries may not be able to provide infrastructure. Andhra Pradesh High Court in G. V. S. Rama Krishna son of Nageswara Rao and others vs A. P. Transco rep. By its Managing Director, Vidyuth Soudha and others 2010 (8) RCR (Civil) 2223, clearly laid down that the only right available to landowners is to receive compensation and damages, if any, sustained by them, as neither there is acquisition of land nor there is any need of consent of the owners or occupiers. Even in Power Grid Corporation of India Limited's case (supra), as well Hon'ble the Supreme Court had not interfered in the process of laying of power lines.

7. In the case in hand as submitted by learned counsel for the respondents, before erecting towers, all technical aspects and the length of the route was properly examined and planned and 60-70% of the work is already over. For the reasons mentioned above, we do not find any merit in the present petition. The same is accordingly dismissed.”

To the same effect is the judgement of this Court in *Kanwar*

Singh's case (supra) wherein this Court has observed as under:-

“17. I have hitherto considered all the issues with reference the statutory provisions and the first principles of law. It is an uncharted path after 2003 Act came into effect as far as this court is concerned. As for the decision of the Supreme Court, an occasion for consideration came in Managing Director Ramakrishna Poultry Private Limited v R.Chellappan (2009) 16 SCC 743, but ultimately the decision came to be rendered on certain agreed lines between parties when the overhead lines were agreed to be raised above a particular height over some poultry sheds so that there was no danger to the livestock and the objections of the owner of the sheds were thus addressed. There are at least two lines of authority on the subject. The Kerala High Court through its judgment in Bharat Plywood and Timber Products Private Ltd. Vs. Kerala SEB AIR 1972 Ker (47(FB)), the Andhra Pradesh High Court through its judgment in G.V.S. Ramakrishna v Managing Director A.P.Transoco AIR 2009 AP 158, the Calcutta High Court in Ashish Kumar Ghose v CESC Ltd A IR 2004 Cal 130, the Gujarat High Court in Jayantkumar Bhagubhai Patel v State of Gujarat AIR 2007 Guj 32, the Madhya Pradesh High Court in Rajak v NTPC AIR 1988 MP 172, the Madras High Court in Chennimalai Gounder v Government of Tamil Nadu AIR 2001 Mad 98; Kanvizhi v TNEB AIR 2008 NOC 1323, the Jharkand High Court in Ajay Munjal Memorial Trust v Power Grid Corporation AIR 2008 Jha 34 have upheld the primacy of public interest over private objectors and recognized the authority of the State or its licensee to lay overhead wires irrespective of objections of private landowners and restricted the limit of objections to be governed by the executive function to take a decision on the objection and carry out the scheme untrammelled by objections beyond consideration of compensation payable. The Delhi High Court in a decision in Surat Singh v Delhi Municipal Corporation AIR 1989 Del 51 and the Patna High Court in Power Grid Corporation v Ram Naresh Singh AIR 2011 Pat 83 have held that overhead lines could not be drawn without the prior consent of the private owners. The Delhi High Court judgment was rendered in the context of a claim for damages for malicious prosecution. The Patna High Court considered the similar objections as raised in the present writ petitions. I hold my view with respect that the decision of the Patna High Court does not commend to me as containing the correct interpretation for the various grounds that I have enumerated in the above paragraphs and would find no reason to repeat them here. The pre-ponderance of judicial opinions from various High Courts uphold the power of the licensee to lay overhead transmission lines without prior consent of the landowner and I uphold such reasoning.

X. Disposition

18. All the writ petitions are disposed of holding that the actions of the 5th respondent conform to law and the claims for compensation shall be dealt with independently in the manner provided under the Telegraphs Act referred to above. The interim orders passed in the writ petitions restraining the works of the 5th respondent are vacated. The State Government is directed to lay

down appropriate conditions for local address of the licensee within the State at the villages or in reasonable proximity where the landowners could collect details of the transmission scheme as notified, placing their objections, etc as a measure of fair play and to make the public notice more effective in all future transactions and In find, for the present, that there is no infraction of statute, Rules, guidelines or orders to found a valid cause of action for the writ petitions.”

In view of the above, no merit is found in the present petition.

Dismissed.

10.10.2018
shamsher

[DEEPAK SIBAL]
JUDGE

Whether speaking/reasoned	:	Yes	/	No
Whether reportable	:	Yes	/	No