

S/L. 10.
30.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

C. O. No. 60 of 2019

**Alipurduar Transmission Limited
and another
Vs.
State of West Bengal and others**

Mr. Kuldip Mallik,
Mr. Vijay Arora,
Mr. Sisir Kumar Kumar,
Ms. Labanyasree Sinha

...for the petitioners.

Mr. Subir Kumar Saha,
Mr. Hirak Barman

...for the opposite party nos. 1 to 4.

The petitioner no. 1 in the present application under Article 227 of the Constitution of India is a juristic entity, which is a telegraph authority under the Telegraph Act, 1885.

The grievance of the petitioners is that, when the petitioners tried to install electrical posts on the lands of the private respondents herein, being respondent nos. 6 to 9, the petitioners faced resistance, for which the said poles could not be installed on such lands, thereby stalling the public project involving the electrification of a huge area of land, affecting adversely the interest of numerous people.

It is submitted that previously there was a direction by a co-ordinate Bench of this court for the District Magistrate to dispose of the application filed by the petitioners under Section 16(1) of the Telegraph Act, 1885 within three weeks from the date of that order, that is, from June 29, 2019.

Despite such direction, the District Magistrate has not only kept the application pending but, by the order impugned herein, directed an enquiry by the Land Acquisition Surveyor as regards the compensation payable to the persons on whose lands the electrical poles were to be installed.

Learned counsel for the petitioners, by placing reliance on Section 10(d) of the 1885 Act, submits that the power of the telegraph authority included the power to install such poles and in the exercise of such powers, conferred by Section 10, the 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) (as in the instant case), shall pay full compensation to all persons interested, for any damage sustained by them by reason of the exercise of those powers.

The very language of Section 10(d), it is argued, indicates that the question of payment of compensation arises only after the exercise of the power, in the present case of installation of electrical poles, and cannot arise prior to such installation.

It is further submitted that Section 16(1) of the 1885 Act deals with the powers of the District Magistrate to provide assistance to the telegraph authorities for exercise of the powers under Section 10 in case of any obstruction.

Relying on Section 16(1) of the said Act, learned counsel for the petitioners submits that 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 her/his discretion, order that the telegraph authority shall be permitted to exercise them.

Sub-section (2) of Section 16 provides that if after 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.

It is then submitted on behalf of the petitioners that the subsequent sub-sections, being nos. (3) to (5), of Section 16 provide for a challenge as regards the compensation, which has to be adjudicated by the District Judge, that too on an application for that purpose being made by either of the disputing parties. As such, it was beyond the domain of the District Magistrate to go into the question of compensation and direct enquiry therefor while exercising its limited powers under sub-section (1) of Section 16 of the 1885 Act.

Learned counsel for the petitioners relies on a judgment reported at **(2017) 1 Cal L T 266 (Mohan Lal Sarkar vs. Power Grid Corporation of India Limited and others)** rendered by a Single Judge of the Principal Seat, wherein it was held *inter alia* that, stopping of the work of such a huge magnitude is bound to cause loss for the entire nation, particularly, the countless inhabitants of the areas likely to be benefitted by the completion of the said project work.

It was further held therein that this does not mean that an individual owner of land or properties thereon, in any form whatsoever, shall have no remedy.

Upon placing reliance on a judgment of the Andhra Pradesh High Court, the learned Single Judge held that the petitioner had remedy under Section 16(3) of the 1885 Act, which empowers a dissatisfied person to move before the District Judge, within whose jurisdiction the property is situated, for determination of the quantum of compensation payable to such person.

It was further observed in the said judgment that the said case was dismissed as the petitioner had not exhausted the remedy available to him under the Telegraph Act.

The learned Single Judge also observed that the question is, whether a public purpose can be deferred till such compensation is made and the law was held to be well-settled on such point. Public interest, it was held, has an essential criterion that if an act was to achieve public purpose, it has to be accomplished expeditiously; such an act must be reckoned to have been done by the State exercising its power of eminent domain. It does not offend any of the rights of the petitioner. The right of eminent domain is the right of the State through its agencies to assert its dominion even over a private property without the consent of the owner if there exists any public exigency or is necessary for the benefit of

the public and after all private interest must give way to the public purpose.

Learned counsel further cites a judgment reported at **(2010) 8 Supreme Court Cases 329 (Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil)**. In placing particular reliance on paragraph no. 47 of the said judgment, it is submitted that while exercising the jurisdiction under Article 227 of the Constitution of India, apart from annulling the proceeding-in-question, the High Court can also substitute the impugned order by the order which the tribunal should have made.

As such, it is argued that this Court may pass a direction on the relevant authorities to assist the petitioners in installing the poles on the relevant plots of land, more so, since the deadline of completion of the contract of the petitioners is fast approaching.

Learned counsel for the respondent nos. 1 to 4 relies on the self-same provisions as relied on by the petitioners.

It is argued by the respondent nos. 1 to 4 that Section 10(d) is very specific as to the exercise of the powers by the telegraph authority under the said section being accompanied by a liability to pay compensation and both have to go

hand-in-hand. It is argued that the persons who are affected by the damage caused by the telegraph authority cannot wait till the occurrence of such damage for getting the compensation.

It is further submitted that Section 16(1) of the 1885 Act only enables the District Magistrate, that too in her/his discretion, to order that the telegraph authority shall be permitted to exercise the powers under Section 10(d) of the said Act of 1885. It is argued that, since Section 10(d) itself envisages the payment of full compensation as well the exercise of the powers conferred by the said sub-section, it was within the domain of the District Magistrate to hold an enquiry as to the compensation payable first, before rendering such assistance as contemplated in Section 16(1) of the Act of 1885.

Upon considering the submissions of both sides and a consideration of the appropriate sections in proper perspective, it is evident that Section 10 of the 1885 Act confers authority on the telegraph authorities to place and maintain a telegraph line which, in the present case, contemplates poles for giving electric connection, in or upon any immovable property. Clause (d) of Section 10 specifically provides that, in exercise

of powers conferred by the said section, the telegraph authority shall do as little damage as possible, thereby contemplating the scope of some damage being done, which is but a natural collateral damage, while installing such poles. However, it is further provided in the said clause that, when the authority has exercised those powers in respect of any property other than that referred to in Clause (c), which governs the present context, it shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

Two factors come into consideration from a plain reading of Section 10(d) - first, only after the authority has exercised the powers in respect of any property as contemplated in Section 10, the question of paying full compensation by the authorities to all persons interested arises. Moreover, it is obvious that the damage actually sustained by persons interested, and consequentially the quantum of compensation, cannot be ascertained on a prior apprehension, unless damage actually occurs when the poles are installed in the property in question.

Reading Section 16(1) in the light of Section 10(d), the “discretion” conferred on the District

Magistrate has only to be restricted to the question as to whether any resistance or obstruction was actually offered to the exercise by the authorities of the power conferred by Section 10. Although the caption of Section 16 relates to exercise of powers conferred by Section 10 and disputes as to compensation, in case of property other than that of a local authority, the various sub-sections of Section 16 and their chronology clearly indicate the scheme of the said Act, being that the power of the District Magistrate is only confined to the passing of an order assisting the telegraph authority to exercise its jurisdiction under Section 10, if resistance or obstruction is offered.

Sub-section (2) of Section 16 even attributes a criminal offence to persons who resist the exercise of those powers even after making of an order under sub-section (1).

The language of sub-sections (1) and (2) of Section 16, read in conjunction, clearly show that those contemplate a resistance by the person interested, over whose land the installation is done. It is obvious that there cannot be any obstruction and/or resistance by a person who is interested in the property, to the payment of compensation. A person, who is affected, and

has interest in the property, can only resist or obstruct the exercise of the power by the authority in installing poles and would not “resist or obstruct” the payment of compensation.

As such, if the power of the District Magistrate under Section 16(1) is to take within its fold the assessment of compensation as well as assisting in removing obstruction to the execution by the authority, it would be an absurd interpretation of Section 16 (1), contrary to the spirit of the law.

The logic contained in sub-sections (3), (4) and (5) of Section 16, which specifically confer power on the District Judge to assess the appropriate compensation and the sufficiency of compensation, that too only on an application for the purpose being made by either of the disputing parties to the District Judge, vindicates an interpretation restricting the power of the District Magistrate only to ascertain the nature and extent of resistance and obstruction offered and to assist the exercise of power by the telegraph authority immediately .

As such, the District Magistrate acted entirely beyond his jurisdiction in directing the Land Acquisition Surveyor to arrive at a

conclusion upon a field survey, for the purpose of assessing compensation.

However, this Court is not inclined to usurp the power of the District Magistrate because of the discretion, however miniscule, conferred upon the District Magistrate by Section 16(1) of the Act of 1885, to ascertain whether there is actually any restriction or obstruction, as to the extent and nature of such restriction and obstruction, if any, and as regards the property in which the power conferred under Section 10 is sought to be exercised.

However, keeping in mind the urgency involved in the matter, since the expiry of the petitioners' contract to undertake the work is imminent and is almost complete otherwise, an urgent direction ought to be given to the District Magistrate to exercise his power under Section 16 (1), confined to the restrictions as provided in the said sub-section, within a limited period.

Accordingly, C. O. No. 60 of 2019 is allowed, thereby setting aside the impugned order dated August 9, 2019 passed by the District Magistrate at Jalpaiguri, who is the present respondent no. 2, and directing the District Magistrate, Jalpaiguri, to immediately dispose of the application under Section 16(1) of the 1885 Act,

filed before the said authority by the present petitioners, by providing appropriate police assistance to the petitioners, only recording a satisfaction as to whether resistance has actually been offered to the installation of the electric poles on the lands-in-question. Such application under Section 16(1) of the 1885 Act shall be disposed of by the respondent no. 2 within a week from this date. It is made clear that this direction is mandatory and it is further clarified that the District Magistrate shall remain confined to the power conferred on him under Section 16(1) of the 1885 Act, as discussed above, by providing assistance to the petitioners in the event any resistance or obstruction has been offered by the private respondents, and shall not to go into the question of compensation at all.

Parties are given liberty to act on the communication made, along with a website copy of this order, subject to the petitioners having applied for a certified copy of the same.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)