

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

1016. WRIT PETITION NO. 4196 OF 2019

Power Grid Corporation of India Ltd.,
Sub-station, Chitte Pimpalgaon,
Aurangabad-Beed highway, Aurangabad ...Petitioner

VERSUS

The State of Maharashtra and others ...Respondents

Mr. G.S. Rane, Advocate for petitioners
Mr. S.R. Yadav, Asstt. Govt. Pleader for respondents No. 1 to 3
Mr. P.P. Uttarwar, Advocate for respondent No.4

CORAM : RAVINDRA V. GHUGE, J.

DATE : 14th JUNE, 2019

PER COURT:

1. I have heard the learned Advocate for the respective sides extensively on 13th June, 2019.

2. The petitioner is aggrieved by the order dated 13th September, 2017 passed by respondent No.2 and the order dated 10th September, 2017 (actual date being 10th September, 2018) passed by the respondent No.3.

3. The learned Division Bench of this Court had passed an order on 6th April, 2016 in Writ Petition No. 3970 of 2016 filed

by respondent No.4 herein, vide which, the matter pending before the District Collector filed by respondent No.4 seeking compensation, was directed to be decided. It was specifically directed that the District Collector would consider the objection as regards the maintainability of the application alongwith all other issues.

4. In so far as the order dated 13th September, 2017 passed by the respondent No.2 is concerned, the learned Asstt. Govt. Pleader, despite his valid efforts, could not indicate from the order as to whether the District Collector has complied with the directions issued by the learned Division Bench in deciding the objection of maintainability of the application. Similar is the case with regard to the order dated 10th September, 2018 passed by the respondent No.3-Committee, which has also not dealt with the said objection.

5. It is not in dispute that the petitioner has assessed the extent of damages caused to the trees and has paid an amount of Rs. 10,00,000/- to respondent No.4. An undertaking is given by respondent No.4 on 12th November, 2015 that he is accepting the compensation of Rs. 10,00,000/- without prejudice to his rights as regards the number of trees affected by the project.

6. The Hon'ble Apex Court in the case of *Power Grid Corporation of India Ltd. Vs. Century Textiles and Industries Ltd. and others*, 2017(6) *Mh.L.J.* 22, has observed in paragraph No. 20 as under:

“ 20. 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 December 24, 2003 exercisable under Indian 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 Indian Telegraph Act, 1885, it acquires all such powers which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885 including power to eliminate any obstruction in the laying down of power transmission lines. As per the provisions of the Indian 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 Indian Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines. Powers of the Telegraph

Authority conferred by sections 10, 15 and 16 of the Indian 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.”

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“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 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, 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..."*

7. It is, thus, clear that the Power Grid is conferred with the powers of the Telegraph Authority and has to be treated as an Authority under the Telegraph Act, 1885. It acquires all such powers, which are vested in a Telegraph Authority under the provisions of the Indian Telegraph Act, 1885.

8. Respondent No.4 has raised a dispute as regards the assessment made by the petitioner. He agrees with the assessment made by the Taluka Agricultural Officer, Badnapur, on 7th April, 2015 when he addressed the communication to the

petitioner stating the extent to which fruit bearing trees have been affected by the project of the petitioner. Respondent No.4 agrees with the amount of compensation assessed by the Taluka Agricultural Officer. The said communication dated 7th April, 2015 is taken on record and marked as 'X' for identification.

9. The dispute, therefore, is as to whether the petitioner has made the right assessment or the Taluka Agricultural Officer, who is a member of the Committee under the Govt. Resolution dated 31st May 2017.

10. The Hon'ble Apex Court in *Century Textiles*, (supra), has considered the entire scheme and in the event of any dispute raised by the land owner, has concluded in paragraph No. 26 of the judgment as under:

“ 26. These are sufficient reasons to allow Civil Appeal No. 10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a suit before the concerned District Judge for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated October 15, 2015 in this behalf which inter alia 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 always be open to the writ petitioner to avail the remedy as per the said guidelines.”

11. In the light of the above, I find that the impugned orders have been passed without jurisdiction since the parties will now have to establish on the basis of evidence as to how many fruit bearing trees can be said to be affected by the project of the petitioner and such aspects, in view of the law laid down by the Hon'ble Apex Court in *Century Textiles*, (supra), would entitle the fourth respondent to approach the District Court and raise his claim.

12. Clause 3.2 of the Govt. Resolution cited would indicate that the assessment of the loss caused to the fruit bearing trees would be considered by following the conventional method of making such an assessment. There is no dispute as the issue as regards loss caused to the fruit bearing trees was being referred to the Court of the District Judge for assessment.

13. The learned Advocate for respondent No.4 submits that he would lodge appropriate proceedings before the learned District Court, Jalna, within a period of four weeks. He makes a request that considering the length of the litigation and its peculiar type, the learned District Court may be directed to decide the suit expeditiously. The issue of delay as well as the interest component will have to be decided by the learned District Judge.

14. In view of the above, this petition is partly allowed.

The impugned orders dated 13th September, 2017 and 10th September, 2018 are quashed and set aside.

15. Respondent No.4 Eknath Vithoba Kale would be at liberty to approach the District Court, Jalna, by preferring his suit within six weeks from today.

16. Considering the litigation between the parties, in the event of there being any delay, the learned District Court would consider the length of the litigation between the parties till the passing of this order and six weeks thereafter and a factor to be considered as a good ground for condonation of delay.

17. So also, taking into account the peculiar type of the litigation and the loss caused to respondent No.4, who is a farmer, coupled with the loss of income for the last four years after the project was commissioned, I deem it appropriate to direct the learned District Court to decide the said suit as expeditiously as possible and preferably within a period of one year from the date of filing of the suit.

(RAVINDRA V. GHUGE)
JUDGE