

Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.19175 OF 2018

Century Rayon Limited,)
Office :- Industry House, 159,)
Churchgate Reclamation,)
Mumbai – 400 020.) ...Petitioner

....Versus....

1. IVP Limited)
Reg. Office at : - Shashikant Redij)
Marg, Ghorupdeo, Mumbai - 400 033)
Through its Authorised Representative)
Shri Rushikesh Mukund Karandikar,)
Age 36 years, Occupation – Service,)
Residing at Shashikant Redij Marg,)
Ghorupdeo, Mumbai – 400 033.)
)
2. Maharashtra State Electricity)
Distribution Company Limited,)
Kalyan Division, Tejashree)
Building, Murbad Road, Kalyan.)
)
3. Shri Ramesh Patil,)
Aged 50 years, Occupation – Business)
Residing at Vadavali, Post - Atale,)
Taluka Kalyan.) ...Respondents

Mrs.Deepa Chavan with Mr.Zubin Morris, Mr.Ravindra Chile and
Mr.Aditya Singh i/b Little & Co. for the Petitioner.

Mr.Girish Godbole with Mr.Shrivardhan Deshpande and Mr.Sahil
Harjani i/b M/s Desai & Diwanji, for the Respondent No.1.

Mr.Abhijit Joshi with Mr.Nishant Patil for the Respondent No.2.

CORAM : R.D. DHANUKA, J.
RESERVED ON : 19TH OCTOBER, 2018
PRONOUNCED ON : 9TH JANUARY, 2019

JUDGMENT :-

1. By this Writ Petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 28 June 2018 passed by the learned District Judge - 4, Kalyan in Miscellaneous Civil Appeal No.13 of 2018 dismissing the said Miscellaneous Civil Appeal filed by the petitioner arising out of the order dated 6th January 2018 passed by the learned Civil Judge Junior Division, Kalyan granting temporary injunction in favour of the respondent no.1 in Regular Civil Suit No.625 of 2017. Some of the relevant facts for the purpose of deciding this Writ Petition are as under :-

The petitioner is the original defendant no.2 whereas the respondent no.1 is original Plaintiff. The respondent Nos.2 and 3 hereinafter referred to as original defendant Nos.1 and 3 in Regular Civil Suit No.625 of 2017.

2. It is the case of the petitioner that the petitioner has been doing the business of manufacturing and sale of chemicals and has a plant at Village Mohane, Taluka Kalyan, District Thane. The petitioner made an application to the respondent no.2 for Line in Line Out ('LILO') on 100 kv Mohane-Ambarnath DC TL for 100 kv proposed sub-station to supply power from 22 kv line to 100 kv. The respondent no.2 addressed a letter to MSETCL being a transmission authority empowered under section 164 of the Electricity Act, 2003 (in short – 'Electricity Act'). It is the case of the

petitioner that the said MSETCL approved the scheme of 100kv DC transmission line for giving 19.2. MVA power to the petitioner under the supervision of MSETCL. According to the Petitioner, the entire procedure of execution of work was provided under clause no.3.2 of the Conditions of Supply Based on the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

3. It is the case of the petitioner that as per the terms and conditions of MSETCL has been paid supervision charges on 22nd June, 2016 for executing the work of laying down the transmission lines. The work and route for tower line was approved by MSETCL. The petitioner under supervision and in accordance with the sanctioned scheme allotted work to one M/s.Shivam Contractors, being the approved contractor of MSETCL for erection of towers under the supervision of respondent no.2. The petitioner started the excavation work from 1st December, 2017 and excavation work of Tower 2.

4. It is the case of the petitioner that the said line cannot be termed strictly as a Dedicated Feeder Line. The petitioner had made an application for LILO on 100 kv Mohone-Ambernath transmission line. It is the case of the petitioner that the petitioner had already completed 80% of the work. Mr.Rushikesh Karanvikar raised an obstruction on 22nd December 2017 for not allowing the petitioner to erect the towers. On 26th December, 2017, the respondent no.1 herein filed a suit bearing No.625 of 2017 before the learned Civil Judge, Junior Division, Kalyan under section 34, 37 and 38 of the Specific Relief Act, 1963 *inter-alia* praying for a

declaration that the defendants act of excavation of soil for erecting high tension electric towers in suit lands without lawfully acquiring the required portion of the suit property for the said purpose was *per-se* illegal, *void-ab-initio* since the Plaintiffs were owners of the suit land. The defendant no.1 also prayed for permanent injunction against the defendants to the suit and its officers, agents, servants, employees and contractors restraining them from excavating the soil for the purpose of erecting high tension electric towers from any part of the suit property unless and until required portion of the suit property was lawfully acquired by following due process of law.

5. The defendant no.2 also prayed for issuing mandatory injunction against the defendants to the said suit and its officers, agents, servants, employees and contractors directing them to restore to its original position the suit lands by refilling the soil in the excavated portion of the land. In the said suit the petitioner herein is impleaded as defendant no.2 whereas the respondent no.2 herein and respondent no.3 have been impleaded as defendant no.1 and 3 respectively. In the said suit, the defendant no.2 applied for interim reliefs, restraining the defendants in the said suit including the petitioner herein by way of temporary injunction from making holes for erecting the poles from any part of the suit property unless and until required portion of the suit property was lawfully required.

6. On 6 January 2018, the learned Civil Judge, Junior Division, Kalyan granted the said temporary injunction as prayed for by respondent no.1 herein (original Plaintiff). The petitioner herein challenged the said order dated 6 January, 2018 by filing appeal

before the learned District Court, Kalyan. On 25 April, 2018, the District Court suspended the order dated 6 January, 2018 passed by the learned Civil Judge (J.D.) Kalyan subject to payment of advance compensation of Rs.3,50,000/- to be deposited on or before 27 April, 2018. By an order dated 28 June, 2018 passed by the learned District Judge, the said Miscellaneous Appeal No.13 of 2018 filed by the petitioner came to be dismissed. Being aggrieved by the said order dated 28 June, 2018, the petitioner preferred this Petition under Article 227 of the Constitution of India.

7. Ms.Deepa Chavan, learned counsel for the petitioner invited my attention to various annexures in the Writ Petition and some of the documents forming part of the compilation filed before this Court. She also invited my attention to various averments in the plaint filed by respondent no.1 herein and the prayers thereof. It is submitted by the learned counsel that the respondent no.1 had challenged the erection of electric towers with high tension wires on the ground that services of the respondent no.3 were hired as a Contractor for carrying out work. The work in question was not carried out either by the petitioner or by the respondent no.2. respondent no.2 did not acquire the suit land owned by the respondent no.1. No permission or approval of the respondent no.1 was taken before carrying out any work on the suit plot.

8. The learned counsel placed reliance on the prayers in the plaint along with averments as contended in paragraph Nos.6 to 9 and submits that the said prayers itself are untenable in law. She submits that since the final relief as prayed by the respondent no.1 in the said suit itself could not be granted under any provisions of

law, no interim relief as prayed for by the respondent no.1 could be granted by the learned trial Judge in the said Application below Exhibit 5. The learned District Judge thus, ought to have interfered with the said interim order passed by the learned trial Judge in the appeal preferred by the petitioner. It is submitted by the learned counsel that no consent of the land owner is required when powers are exercised by a licensee under section 164 of the said Electricity Act.

9. In support of this statement, learned counsel placed reliance on the Judgment in the case of **Jarnail Singh vs. Maharashtra State Electricity Transmission Co. Ltd., Nagpur, AIR 2015, Bombay 283** and in particular paragraph no.11 and 28. She submits that this Court in the said Judgment has considered the Supremacy of the power of MSETCL for issuance of notification dated 24 August 2006. It is submitted by the learned counsel that the entire tenor of the plaint would clearly indicate that there was no serious objection raised by the respondent no.1 about the work carried out by the petitioner on the said land as per permission granted by the respondent no.2. The entire suit was based on the premise that the land of the respondent no.1 was not acquired by the respondent no.2 before granting any permission in favour of the petitioner to carry out any work on the suit land.

10. It is submitted that under the provisions of Electricity Act, no land acquisition is contemplated. She also placed reliance on the Judgment of this Court in the case of **Vivek Brajendra Singh vs. State of Maharashtra, 2012(4) Mah.L.J. 625** in support of this submission. She submits that the respondent no.2 is only

empowered to use the land and not conferred with any other right, title or interest of any nature in the suit land. She submits that the respondent no.1 has not been divested of any owners rights in the suit land.

11. It is submitted by the learned counsel that the respondent no.1 has not raised any grounds relating to expenses being borne by the petitioner and did not contend that the exercise of powers under section 164 of the Electricity Act was initiated on that ground. No such ground was even urged at the stage of hearing of interim application filed by the respondent no.1 before the trial Court. No ground relating to the right of way of the petitioner has been pleaded in the plaint or in the applications preferred before the two Courts below. The learned counsel for the petitioner submits that the prayers in the plaint regarding acquisition of land of the respondent no.1 can not be granted by the Civil Court in the said suit since such acquisition of land is *ex-facie* not contemplated under the provisions of Electricity Act. She submits that the learned trial Judge thus could not have granted interim relief in favour of the respondent no.1.

12. In support of this submission, she placed reliance on the judgment of Hon'ble Supreme Court Cases in the case of **Cotton Corporation of India Limited Vs United Industrial Bank Limited & Ors. (1983) 4 SCC 625**. She also placed reliance on the judgment of this Court in the case of **Shri Cutchi Visa Oswal Derawasi Jain Pathshala vs. Shri Cutchi Visha Oswal Derawasi Jain Mahajan, 2005(1) All MR 484**, in particular paragraph 34 thereof.

13. It is submitted by the learned counsel that there was a dispute between the respondent no.1 and the respondent no.3 in relation to the suit land where the work had been carried out. The respondent no.1 has not identified the location of the erected towers on Survey No.43/32, 42/12 and 44/2, claimed by respondent no.1. The impleadment of respondent no.3 as defendant no.3 itself is illegal. The respondent no.3 claimed to be the owner of the suit land bearing Survey no.43/31(p). The respondent no.3 constructed two high tension towers and that the construction of one of the towers was below the bore-well of the respondent no.3.

14. It is submitted by the learned counsel for the petitioner that the learned District Judge erroneously did not permit the petitioner or the respondent Nos.2 and 3 to bring subsequent facts and more particularly, about the proceedings before the learned District Magistrate on record by erroneously relying upon the decision by this Court in case of **Orange City Mobile Collection vs. City Collection, MANU/MH/0239/2017**. The District Court deprived the petitioner, respondent Nos.2 and 3 to rely upon the subsequent events by exercising rights conferred under Order XLI Rule 27(1) of Code of Civil Procedure 1908.

15. It is submitted that though the petitioner had specifically pointed out that the entire work had been carried out by the petitioner pursuant to the interim order dated 25 April, 2018 passed by the Appellate Court in Miscellaneous Civil Appeal No.13 of 2018 and more particularly, during the period when the interim order passed by the learned trial Judge was suspended by the Appellate

Court which had bearing on the outcome of the said Miscellaneous Civil Appeal filed by the petitioner, the learned District Judge failed to consider those subsequent events and erroneously rejected the said appeal filed by the petitioner. She submits that the learned District Judge ought to have considered this crucial aspect that the respondent no.2 had already initiated before the learned District Judge, the proceedings relating to compensation in respect of the work undertaken by the petitioner on the suit land and resisted by the respondent no.1 which would be considered only by the learned District Magistrate. No temporary injunction thus could be granted against the petitioner or other respondents.

16. The learned counsel for the petitioner placed reliance on section 10 and 16 of the Indian Telegraph Act, 1885 and submits that the dispute if any between the persons entitled to receive the compensation or as to the proportions in which such persons interested are entitled to share in it, such dispute has to be determined by the District Judge. She submits that under section 16 of the Indian Telegraph Act, 1885 no hearing is contemplated to be granted to the landowner. The learned counsel for the petitioner placed reliance in case of **Orange City Mobile Collection** (supra).

17. Mr.Godbole learned counsel for the respondent no.1 invited my attention to some of the averments in the plaint and the prayers thereto. He submits that his client is the owner of Survey no.43/32 of Vadavali and Survey Nos.42/12 and 42/2 of Village Mohane under the Kalyan Dombivli municipal limits. He also placed reliance on 7/12 extracts, title of his client in respect of the suit lands and also the sale deed. He submits that on 22nd

December 2017, the respondent no.3 had unauthorisedly started excavation of two big pits in the suit land without any intimation or consent of respondent no.1. The respondent no.1 was forced to file Civil Suit *inter-alia* praying for various reliefs and reliefs such as permanent injunction.

18. It is submitted that the respondent no.3 had filed affidavit in reply in the said application below Exhibit 5 that he was the owner of land bearing Survey no.43/31(p) of village Vadavali. The petitioner herein had awarded contract of Rs.8,72,45,000/- to Shivam Engineering Project Private Limited and had merely paid supervision charges of Rs.8,86,000/- to respondent no.2 - MSEDCL herein. respondent no.2 had given consent to install the High Tension Tower through their land.

19. It is submitted that the respondent no.2 herein had filed a reply before learned trial Judge that the petitioner herein had applied for independent 100 KV electricity line through the High-Tension Transmission Line of respondent no.2. It was stated in the said affidavit that the power supply lines and transmission tower came to be supplied by the petitioner herein under the supervision of respondent no.2 herein and would be handed over to the respondent no.2 for erecting High Tension lines and towers. The consent of the land owner thus, is not necessary under the Electricity Act, 2003 and Indian Telegraph Act, 1885.

20. It was contended by the respondent no.2 in the said Application Exhibit 5 that only compensation had to be paid by the petitioner herein. The petitioner had placed work order upon by

respondent no.3 at the cost of Rs.8,74,45,000/-. The suit land is open land and was not in possession of respondent no.1 herein. It is submitted by the learned counsel that the said High Tension line was neither being laid at the cost of respondent no.2 who is a Transmission Licensee MSETCL or MSEDCL which is a Distribution Licensee but has been laid entirely at the cost of the petitioner which is a private entity for Dedicated Distribution Facility (DDF).

21. It is submitted by the learned counsel that both the Courts below have recorded detailed reasons while granting relief of temporary injunction in favour of respondent no.1. He submits that the learned Civil Judge (J.D) has rightly held that the problem of right of way if any between the petitioner and the respondent no.1 had to be sorted out by the parties themselves. No document was produced by the respondent no.2 herein regarding any order of prior consent of District Magistrate and thus, in the absence of such orders, the provisions of Electricity Act, 2003 and Indian Telegraph Act, 1885 were not attracted. The petitioner had failed to show that it was conferred with any powers of licensee.

22. The learned counsel for the respondent no.1 submits that the interim order passed by the learned District Judge thereby suspending the interim reliefs granted by the learned trial Judge was challenged by his client in Writ Petition (Lodging) No.14267 of 2018. By consent of parties, the said interim order passed by the learned District Judge on 25 April, 2018 was quashed and set aside. This Court directed parties to maintain status-quo in respect of the suit property.

23. The learned counsel invited my attention to paragraph nos.18 to 25 of the interim order passed by the learned District Judge regarding various *prima facie* finding in favour of respondent no.1 and against the petitioner. It has been held by the learned District Judge that in case of obstruction, the Telegraph Authority must approach District Magistrate for seeking permission to exercise power under section 10 which application was admittedly not made by the Telegraph Authority. He submits that there is no documentary proof produced by the petitioner to show that the work was not going on in the land of respondent no.1.

24. It is submitted that since the respondent no.1 had already resisted and obstructed the work of excavation, it was for the respondent no.2 to approach the District Magistrate for permission to exercise powers under section 10 of the Indian Telegraph Act, 1885. It is submitted by the learned counsel that since it was the case of the petitioner itself that the work was carried out pursuant to the sanctioned scheme in Maharashtra Government Gazette dated 5th January, 2018 and that respondent no.2 and the petitioner had approached Competent Authority for obtaining orders of removal of all obstruction for completing work itself would prove that provisions of section 164, the Electricity Act 2003 had not been followed by the petitioner or respondent no.2.

25. It is submitted by the learned counsel that the provisions of section 164 of the Electricity Act, 2003 cannot be read in isolation and has to be read with sections 67 to 69. The learned counsel for the respondent no.1 submits that the line in question is High Tension electric line within the purview of MSETCL (Transmission

Company) where as the DDF has been provided to the petitioner. The Government of Maharashtra had issued notification only in favour of the respondent no.2 on 24th August, 2006. The said notification does not confer power to delegate. The power was conferred only on respondent no.2 under the said notification and not on any private entity. respondent no.2 had only published a draft Notification for undertaking work under its supervision.

26. The learned counsel for the respondent no.1 submits that section 10 of the Indian Telegraph Act, 1885 does not confer unbridled powers. It prohibits a Telegraph Authority to exercise the said powers except for the purposes of a telegraph established or maintained by the Central Government or to be so established or maintained. The DDF which was being established for exclusive use of the petitioner is neither a telegraph established nor maintained by the State Government or the respondent no.2 which is a transmission licensee.

27. It is submitted that in lieu of section 10(d) of the Indian Telegraph Act, 1885, the Telegraph Authority is permitted to do as little damage as possible in exercise of its powers. Learned counsel also placed reliance on sections 12 to 17 of the Indian Telegraph Act, 1885 and submits that the order dated 24 May 2017 passed by MSETCL had imposed a condition that all the 'right of way' problems and other problems must be solved by the petitioner. Consent of the landlord must be obtained by the petitioner. Entire costs had to be incurred by the petitioner since it was a DDF. He strongly placed reliance on judgment of Division Bench of this Court in the case of **Jarnail Singh** (supra), which had considered

challenge to section 10 of the Indian Telegraph Act, 1885 and has upheld the validity of the said provision.

28. The learned counsel submits that Division Bench of this Court has clearly held that under section 10 of the Indian Telegraph Act, 1885, the telegraph authority is given powers only with limited purpose of establishing or maintaining a telegraph and not more than such powers. The said proviso does not allow the authority to use the power for any other purpose thereby keeping it moored to the object of the Act. Learned counsel for the respondent no.1 submits that the Division Bench of this Court in section 16 had clearly held that the provision of hearing has to be read in section 10 read with sections 16 and 127 of the Indian Telegraph Act, as they confer discretion upon the District Magistrate to adjudicate on the justifiability of the objection or acceptability of the suggestion and no public authority can exercise a discretion arbitrarily.

29. The District Magistrate is thus, required to inquire as and when objection is taken or suggestion is given regarding the laying or maintaining a telegraph line and decide as to whether or not the obstruction or suggestion is justified and whether or not the permission to continue with the work should be granted or not. The learned counsel also placed reliance on the judgment of this Court in case of **Vivek Brajendra Singh vs. State of Maharashtra & Ors., 2012(3) ALL MR 130**, where the validity of section 10 of the Indian Telegraph Act 1885 was upheld on the premise that without authorisation under section 164 which is a general authorisation given, the same is for the purpose of laying down transmission lines for general public. He submits that the judgment of the Division

Bench in **Vivek Brajendra** (supra) was dealing with a HT Feeder of respondent no.2 and the said judgment would clearly fit in the frame of this case.

30. It is submitted that in the facts of this case neither the petitioner nor the respondent no.2 can rely upon either section 163 and 164 of the Electricity Act and section 10 and 16 of the Indian Telegraph Act 1885. It is alternatively submitted that even if section 163 under the Electricity Act is applicable, unless there is specific order, conferring powers on the respondent no.2 or MSEDCL to exercise powers of Telegraph Authority under the provisions of Indian Telegraph Act, 1885 especially for the DDF of the petitioner, the provisions of Indian Telegraph Act, 1885 do not get attracted. In his alternate submission, it is submitted that since the respondent had obstructed, being the owner of the suit land, unless and until the learned Magistrate would have passed an order under section 16 of the Indian Telegraph Act 1885 read with section 3 of Maharashtra Electricity Work of Licensees Rules, 2012, no work would be done by the petitioner.

31. It is submitted that when the suit was filed by the respondent no.1, only foundation was laid and the land owned by the respondent no.1 and the issue of ownership was not disputed. Under the orders obtained by MSETCL, the consent of each of the owner of land was mandatory and was required to be obtained before proceeding with any such activities on such land under the provisions of the Indian Telegraph Act read with provisions of Electricity Act. He submits that it is not disputed by the petitioner that the petitioner had obtained such consent from the land owners

on whose name such activities were carried out by the petitioner.

32. Learned counsel invited my attention to the averments made in the plaint filed by respondent no.1 and would submit that respondent no.1 had raised objection about making such construction activity on the plot of the respondent no.1 immediately and thus, unless the permission was obtained by the respondent no.2 from the District Magistrate in advance, no such work would have been commenced or carried out by the petitioner. He submits that the entire action of the petitioner and respondent Nos.2 and 3 was high handed. The respondent no.1 has also filed a police complaint which also would clearly indicate that the construction carried out by the petitioner through the respondent no.3 was obstructed by respondent no.1.

33. The learned counsel invited my attention to the prayers in the said suit filed by his client and would submit that the dispute raised by his client in the said suit was about the entry of the petitioner itself on the suit land. The petitioner and the respondent no.2 have not complied with due process of law under section 16 of the Indian Telegraph Act. He submits that the telegraph line was not established by respondent no.2 in this case but was established by the petitioner. He submits that admittedly, this Writ Petition has not been filed by the respondent no.2 but has been filed by a private party. The cause of action being held was in favour of respondent no.2 and not the petitioner.

34. It is submitted that the petitioner is not a licensee under the provisions of the Electricity Act. The learned counsel for the

respondent no.1 invited my attention to the terms and conditions of the permission granted by respondent no.2 and more particularly in the letter dated 24 May 2017 and would submit that the respondent no.2 has permitted the 100 KV power supply. The said project was not a public project. The petitioner was simplicitor one of the consumer. He submits that if the respondent no.2 would have carried out the project, there was no question of any consent. section 164 of the Electricity Act cannot be read in isolation which give assumable powers to be exercised by the Government. respondent no.2 had no power to delegate its powers to the petitioner or the petitioner in turn would not have delegated powers to respondent no.3.

35. It is submitted that the findings of both the Courts below being concurrent findings and being not perverse cannot be interfered with by this Court in this Petition. It is submitted that if according to the petitioner or the respondent Nos.2 and 3, the petitioner was not affected at all in view of the objection raised by the respondent no.1, the petitioner should not have approached the District Magistrate.

36. Mr.Abhijeet Joshi, learned counsel for the respondent no.2 i.e. Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) submits that the petitioner was a consumer of Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) and was availing 19.2 MVA power. The petitioner had applied to the respondent no.2 for grid connectivity for 19.2 MVA power at Kalyan Murbad Road, Shahad, Dist. Thane through MSETCL grid for reliable and efficient supply. Since plant of the petitioner was not

connected to the MSETCL transmission grid directly, MSETCL required to construct a 100 kv LILO transmission line from the Tower Location no.10 of the Mohane-Ambarnath Transmission Line.

37. Accordingly respondent no.2 wrote a letter dated 24 May 2017 granting various permissions to Petitioner. He submits that project of construction of the 100 kv LILO line to provide grid connectivity of the petitioner was approved by the Board of Directors of respondent no.2 and was also published in the official gazette. Under the said approval granted by respondent no.2 the said transmission line of 100 kv LILO was to be handed over by the petitioner to the respondent no.2 after completion of the said work. The petitioner also had to hand over suitable plot of land for the said transmission line. The said plot of land has to be provided by the petitioner to the respondent no.2 free of cost and with separate approach.

38. It is submitted that the said 100 kv LILO line was being constructed by the petitioner for MSETCL since the respondent no.2 was the approved transmission licensee in the State of Maharashtra having the transmission network in that area. After handing over the transmission line and the plot of land for the terminal arrangement to the respondent no.2 by the petitioner, the same would enable the respondent no.2 and the Maharashtra State Electricity Transmission Company Limited and Maharashtra State Electricity Distribution Company Limited to extend the electricity supply to the nearby areas as and when required.

39. It is submitted that under section 164 of the Electricity

Act, the appropriate authority is empowered to confer the powers under the Indian Telegraph Act upon the licensee. The State Government had issued notification on 24 August 2006 conferring the powers of the Telegraph Act upon the respondent no.2. He submits that as per the said notification the respondent no.2 or any person acting on behalf of respondent no.2 is entitled to carry out the work of respondent no.2 to exercise powers under the Telegraph Act. The work of the 100 kv LILO line from the tower location 10 of the Mohane-Ambarnath line is being carried out by the petitioner for the respondent no.2 under the powers conferred under section 164 of the Electricity Act and the notification dated 24 August, 2006. The said work is also approved by the notification dated 5 January, 2018 published in the Government Gazette.

40. It is submitted that the State Government has framed rules to aid the work of the licensees under the Work of Licensees Rules, 2012. He submits that by the provisions of Indian Telegraph Act or under the provisions of the Work of Licensees Rules, 2012, the authorities are not required to acquire the land. He placed reliance on the proviso to section 10 of the Telegraph Act, 1885 and would submit that respondent no.2 would only get a right of user in the land in which the respondent no.2 would construct a tower. He submits that the prayers made in the suit filed by the respondent no.1 are also not maintainable.

41. Pursuant to the directions issued by this Court, the respondent no.2 filed a compilation which was filed in the Appeal to show that the Application filed by the respondent no.2 would show that the Application was filed before the learned Collector and Sub-

Divisional Officer. On 10 April, 2018, the Executive Engineer of the Maharashtra State Electricity Transmission Company Limited referred the matter to the Sub-Divisional Officer, informing that the Maharashtra State Electricity Transmission Company Limited had approved the connectivity by laying LILO on 100 kv Mohane-Ambarnath D/C transmission line for giving power supply to the extent of 19.2 MVA to the petitioner. By the said letter, Sub-divisional Officer was requested to issue suitable directives to the concerned authority for early finalization of compensation to the National Peroxide Limited. On 26 April 2018, an officer from the Office of the Executive Engineer, E.H.V. Projects Division, II floor, 'A' wing, Tejashri Bldg., Jahangir Maidan, Karnik Road, M.S.E.T. Co., Ltd., Kalyan filed an application before the learned District Magistrate, district Thane. respondent no.1 was impleaded as non-applicant in the said Application filed under section 16(1) to section 16(4) of the Indian Telegraph Act 1885, therein *inter-alia* praying for an order and direction to finalize the compensation in respect of tower location no.1 & 2 prior to 25 June 2018. He also placed reliance on the letter dated 28 May, 2018 by the District Collector, and District Magistrate to the Sub-Divisional Magistrate Kalyan and letter dated 28 August, 2018 from the Sub-Divisional Officer and Sub-Divisional Magistrate, Kalyan to the District Collector, Thane.

42. Ms.Chavan learned counsel for the petitioner in rejoinder submits that the prayers in the plaint filed by respondent no.1 clearly indicates that the parties proceeded on the basis of the acquisition of land. She also placed reliance on the impugned order dated 28 June, 2018 and submits that the submissions were

made by the respondent no.1 in this regard. She submits that the learned trial Judge as well as the District Court thus, could not have granted injunction against the petitioner.

43. Insofar as submissions of respondent no.1 that the dispute if any in respect of right of way was to be sorted out by the petitioner is concerned, it is submitted that respondent no.1 has not pleaded any right of way in any of the pleadings filed by the respondent no.1 and thus such allegations now made across bar were obviously not dealt with by the petitioner in the said suit filed by respondent no.1. The said plea raised by the respondent no.1 is thus by way of an after-thought.

44. In so far as the issue raised by respondent no.1 that the petitioner had not obtained prior permission from the District Magistrate under section 16(1) of the Indian Telegraph Act, is concerned it is submitted by the learned counsel that since the appellate Court did not allow the petitioner to bring the subsequent events on record, and the impugned order does not deal with this issue and does not refer to the proceedings filed before the learned District Magistrate, no such issue can be allowed to be raised by the respondent no.1 at this stage.

45. Learned counsel placed reliance on the Judgment of the Hon'ble Supreme Court in the case of **Transcore vs. Union of India, 2008(1) SCC 125 at (para 64)** the paragraph no.64 thereof. The learned counsel submits that there could not have been an academic exercise of powers under section 16(1) of the Indian Telegraph Act, 1885, in the facts and circumstances of the case.

She submits that the work on the subject Property was completed when the interim order granted on 25 April 2018 which was in force in Misc. Civil Appeal No.13 of 2018 filed by the petitioner. Only on 17 May 2018, this Court had passed an order in Writ Petition filed by the petitioner directing parties to maintain *status-quo*.

46. It is submitted that in the meantime, the petitioner had already completed the entire work on the suit land. She submits that obtaining any order under section 16(1) of the Indian Telegraph Act, thus did not arise in this case at this stage. The learned counsel placed reliance on the Judgment in particular paragraph 7, in the case of **State of Bihar vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills, AIR 1969 SC 378** in support of her submissions that academic determination of disputes is not initiated.

47. The learned counsel submits that the respondent no.2 had permitted the petitioner to carry out the works by delegating powers under section 164 of the Indian Telegraph Act, 1885. It is submitted that there is no violation of any power or authority under the Indian Telegraph Act, 1885. Under the Telegraph Act, power is conferred on Telegraph Authority under section 10 to place and maintain telegraph lines and posts. Such Telegraph Authority includes Director- General of (posts and Telegraphs) and includes any officer empowered by him to perform all or any of the functions of the telegraph authority which is defined under section 10 of the Indian Telegraph Act, 1885. It is a case of an executive order conferring the powers held by a distinct authority namely, the Telegraph Authority on the licensee, which in the present case is respondent no.2.

48. It is submitted by the learned counsel for the petitioner that the terms and conditions of permission are subject to the determination, approval, sanction, supervision and control of the respondent no.2. The cost estimates are prepared by respondent no.2 - MSETCL. The technical specifications are determined by MSETCL. The civil works are outlined by respondent no.2. The required equipment, instruments are determined by respondent no.2. The entire planning is done by the respondent no.2. The supervision of the entire work is done by the respondent no.2. The material specification and standard of the equipment, drawing and the test reports have to be approved by respondent no.2. The materials have to be procured from approved vendors of respondent no.2 as per the technical specification of the respondent no.2.

49. Insofar as the submission of the respondent no. 1 that HT Line is set up not at the cost of MSETCL but a private entity is concerned, it is submitted by the learned counsel for the petitioner that the plaint filed by the respondent no. 1 does not contain any such plea. The impugned order dated 28.06.2018 also does not deal with the contention relating to expenses incurred by the petitioner. The respondent no. 1 has raised this contention for the first time before this Court. She submits that the project is a Composite Project wherein the petitioner as a Consumer would receive supply as a consumer bid by MSEDCL while being a user of the State Grid Code falling within the term Consumers of the Distribution Licensees directly connected to intra State transmission system of regulation 2.1 (y) of the State Grid Code. She submits

that under section 45 of Electricity Act, 2003 every consumer is bound to pay the fixed charges. The petitioner also would be required to pay for the fixed cost towards the fix asset. There is a legal sanction for the licensees both distribution and transmission to recover the said amount. The connectivity Agreement contemplated under Regulation 14 permitted the respondent no. 2 to provide for the commercial agreement between the petitioner and the respondent no. 2, Transmission Licensee, MSETCL.

50. It is submitted that across the Country, Distribution and Transmission Licensees have continuously and consistently used this model to ask the Consumer to incur the expenditure on payment of supervision charges. The asset so created is necessarily transferred to the licensee and the works carried out sanctioned, approved, planned, estimated for cost, supervised during erection, installation commission by the licensee, is confirmed by the respondent no.2. She submits that respondent no.1, even otherwise cannot be allowed to raise this issue being a third party.

51. Insofar as the issue raised by the respondent no.1, that no public interest is involved in view of the line being Dedicated Distribution Facilities (DDF) is concerned, it is submitted that the said line is DDF only to the extent of Distribution segment. If the entire line of the Project were to be dedicated only to the petitioner then there would have been a declaration in terms of section 2(17) of the Act. She submits that the statutory Regulations together with the sanction letter dated 24.05.2017 makes it clear that the Project being a transmission line and not entirety a DDF. DDF is part of the

distribution aspect of the project. There is a restriction on the voltage level to which supply can be done which is limited to or less than 33000 Volts. The petitioner then falls within the ambit of the term "User" as contained in the State Grid Code.

52. It is submitted by the learned Counsel that the project is a Composite Project, also involving connectivity with the transmission licensee. The petitioner would be required to execute several agreements under the Project i.e. one with the distribution licensee for supply and other with the transmission licensee for connectivity. She submits that the DDF is distinct, and separate from dedicated transmission line defined under section 2(17).

53. Insofar as the contention of the respondent no.1 that the consent of the other landowners was obtained by the petitioner, however, the consent of respondent no.1, was not obtained is concerned, it is submitted that the consent of landowners in a project initiated Under section 154 of Electricity Act, 2003 is not required. The petitioner and the respondent no.2, however, in some cases where there was a clarity of ownership of land have taken the consent/use of such land owners and proceeded with the project. The respondent no.1 itself is also appearing before the learned Sub Divisional Officer and has claimed ownership of Survey no. 43/32, 42/12 and 44/2. There is a dispute in respect of the actual Survey number on which the work was scheduled on. The requirement contained in Rule 3 (1) (a) of the State of Maharashtra Works of Licensee Rules, 2012 to obtain a prior written consent of the owner or occupier has been negated in respect of a licensee exercising powers under section 164 of the Electricity Act, 2003. Section 10 of

the Indian Telegraph Act, 1885 similarly, confers complete power on a licensee to lay down and erect the electric polls and lines.

54. Insofar as the issue raised by respondent no.1, that section 67 is applicable and section 164 is residuary in nature is concerned, it is submitted that section 67 applies to all the licensees irrespective of whether these licensees are empowered to exercise powers of Telegraph Authority under section 164 of the Electricity Act, 2003 or not. The Rules of 2006 framed by the Central Government under section 176 read with section 67 (2) of the Electricity Act apply to such licensees in their entirety. Rule 3 or those Rules does not apply to licensees conferred with powers under section 64 has clarified by Rule 3(4). The State of Maharashtra has notified its own Rules on 11.05.2012. Rule 3 including Rule 3(4) thereof are in pari-materia with rule 3(4) of the Central Rules. The Central Government and the State Government by framing Rules have expressly chosen to give overriding effect of notification under section 164 over the requirement of the consent of land owners. It is submitted by the Learned Counsel that section 163 of the Electricity Act, 2003 was not applicable to the present case the said section admits a licensee to enter for inspection, testing, repairing, altering etc., a premises which are connected to electric supply or any land over under along across in or upon which electric supply lines or works have been placed.

55. It is submitted by the learned Counsel that the *prima facie* findings rendered by both the Courts below are perverse and thus no interference with such findings is warranted in this Writ Petition. Both the Courts below have passed orders independent of

the consideration of subsequent events of the respondent no.2 approaching the learned District Magistrate. She submits that if the impugned orders passed by the two courts below are not set aside, the tremendous hardship would be caused to the petitioner. The balance of convenience is in favour of the petitioner.

REASONS AND CONCLUSIONS :

56. It is the case of the respondent no.1 that the said company is the owner of the land bearing survey no.43/32 at Vadavali and survey nos.42/12 and 42/2 of village Mohane within the jurisdiction of Kalyan – Dombivli Municipal Corporation limits. The respondent no.1 has also placed reliance on the sale deeds and 7/12 extracts in respect of the said land before the learned Trial Court.

57. It was the case of the respondent no.1 that the respondent no.3 started unauthorized excavation of two pits in the land without any intimation or consent of the respondent no.1 on 22nd December, 2017. On 26th December, 2017 itself, the respondent no.1 filed a suit for a declaration that the work of excavation for erecting HT electric towers without lawfully acquiring the rights to the portion of land is *void-ab-initio* and prayed for permanent injunction from carrying out construction until right of way through required portion of land was lawfully acquired by following due process of law and also prayed for mandatory injunction to restore the status of land by refilling the excavated portion.

58. It is not in dispute that the learned Trial Judge allowed an application (Exhibit – 5) filed by the respondent no.1 in the said suit after considering various documents and the pleadings before the learned Trial Judge. The petitioner thereafter filed an appeal before the learned District Judge. On 25th April, 2018, the learned District Judge passed an interim order staying the order dated 6th January, 2018 passed by the learned Trial Judge till 25th June, 2018 subject to certain conditions. It is not in dispute that by consent of the parties, this Court has set aside the said interim order passed by the learned District Judge in the Writ Petition (Stamp) No.14267 of 2018, which was filed by the respondent no.1 herein. On 28th June, 2018, learned District Judge ultimately dismissed the said Miscellaneous Civil Appeal No.13 of 2018 filed by the petitioner herein.

59. It is the case of the petitioner that during the period when the *status-quo* was in force, the petitioner completed the entire construction which was proposed by the petitioner. The respondent no.1 has disputed this position. Pursuant to the oral directions issued by this Court to the respondent no.2, the learned counsel for the respondent no.2 filed a compilation of few documents. A perusal of the said documents and more particularly an application dated 26th April, 2018 filed by the respondent no.2 before the learned District Magistrate under section 16(1) to 16(4) of the Indian Telegraph Act, 1885 indicates that according to the said application, it was the case of the respondent no.2 that the tower erection work at tower location nos.1 and 2 was commenced to complete the work of transmission line and at least 80% of the transmission line was completed i.e. out of 14 amongst 12 transmission were

completed. 10 towers were erected and stringing work completed.

60. It is not in dispute that the respondent no.2 is a transmission lessee as contemplated under section 2(73) and 39 of the Electricity Act, 2003. The respondent no.2 acts as a State Transmission Utility, works towards development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres. It is the case of the respondent no.2 that the petitioner is a consumer of the Maharashtra State Electricity Distribution Company Limited (MSEDCL) availing 19.2 MVA power. The petitioner had applied to the respondent no.2 for grid connectivity for 19.2 MVA power at Kalyan Murbad Road, Shahad, District Thane through the respondent no.2 grid for reliable and efficient supply.

61. It is the case of the respondent no.2 that since the plant of the petitioner was not connected to the respondent no.2 transmission grid directly, the respondent no.2 required to construct 100 KV LILO transmission line from the tower location no.10 of Mohane – Ambernath Transmission Line. The respondent no.2 granted permission to the petitioner vide letter dated 24th May, 2017 for grid connectivity for 19.2 MVA power demand at Kalyan – Murbad, Shahad, District Thane by making LILO on various conditions.

62. Condition (a) provided that right of way problem for laying of line are to be sorted out by M/s.Century Rayons Pvt. Ltd. at their cost. Condition 1 provided that the cost estimates had been

prepared considering the load requirement of the petitioner at Kalyan Murbad Road, Shahad, District Thane under dedicated distribution facility (DDF). The petitioner was required to provide free of cost a technically suitable and developed plot of desired size duly fenced for termination arrangement of the respondent no.2 transmission lines and substation with separate and independent approach roads to the respondent no.2 and consumer switchyard. The petitioner was required to construct control room of required size to accommodate the respondent no.2's equipments like C & R panels, SCADA, PLC panels, 48 V Batteries and charger etc. The supervision work was required to be carried out by the respondent no.2.

63. The application for interim relief filed by the respondent no.1 (original plaintiff) was opposed on the ground that the prayers in the plaint was that without acquiring the land of the respondent no.1, no activities of any nature whatsoever could be carried out by the petitioner, the respondent no.2 or the respondent no.3 on the suit land owned by the respondent no.1. It was vehemently urged by Ms.Chavan, learned counsel for the petitioner that the prayers in the plaint itself would clearly indicate that since the suit was filed on the premise that without acquiring the suit land of the respondent no.1, no activities could be carried out by the petitioner thereon would indicate that the respondent no.1 was mainly concerned with the claim for compensation in respect of such construction activities of the petitioner.

64. It was the case of the petitioner that there is no provision either under the Electricity Act, 2003 or under the Indian Telegraph

Act, 1885 for acquiring the suit land for the purpose of laying the transmission line. It was urged by the learned counsel for the petitioner that since no final relief can be granted in favour of the respondent no.1 in the said suit, learned trial Court or the District Judge could not have granted any interim relief in favour of the respondent no.1.

65. A perusal of the averments and the prayers in the plaint filed by the respondent no.1 clearly indicates that the respondent no.1 has challenged the entire action on the part of the petitioner, respondent no.2 and the respondent no.3 in the plaint, including various activities on the suit land claimed to be owned by the respondent no.1 and had also prayed for permanent and temporary injunction. I am thus not inclined to accept the submission made by the learned counsel for the petitioner that the respondent no.1 has mainly prayed for compensation or has opposed the acts of the petitioner, respondent no.2 and the respondent no.3 only on the ground that such acts could not have been carried out without acquiring the land of the respondent no.1. In my view, the suit filed by the respondent no.1 is not for seeking acquisition of the land of the respondent no.1 by the petitioner or by the respondent no.2. The judgment of this Court in case of **Jarnail Singh** (supra) thus would not assist the case of the petitioner.

66. A perusal of the plaint further indicates that it was the case of the respondent no.1 that the respondent no.3 on behalf of the petitioner had started excavated two big pits in the land of the respondent no.1 without any intimation or consent of the respondent no.1 on 22nd December, 2017. The respondent no.1

immediately filed a suit on 26th December, 2017 for various reliefs. The respondent no.1 had also filed a police complaint in that regard. The record would clearly indicate that the obstruction was thus already created by way of protest by the respondent no.1 against the petitioner and the respondent no.3. It is not in dispute that the petitioner had not taken any consent of the respondent no.1 before carrying out any excavation work or otherwise on the plots claimed to be owned by the respondent no.1.

67. A perusal of the application dated 26th April, 2018 filed by the respondent no.2 before the learned District Magistrate on 26th April, 2018 under sections 16(1) to (16(4) of the Indian Telegraph Act, 1885 clearly indicates that the said application was filed for the first time on 26th April, 2018 stating that almost 80% work of transmission line was completed by the petitioner. In the said application, the respondent no.2 has also referred to the interim order passed by the learned District Judge in Miscellaneous appeal No.13 of 2018 filed by the petitioner granting an order of status-quo till 25th June, 2018 and directing the respondent no.2 to initiate appropriate proceedings through the licensing authority i.e. MSECTL before the District Magistrate, Thane.

68. Under section 16(1) of the Indian Telegraph Act, 1885, the District Magistrate is empowered to exercise his discretionary power to permit the telegraph authority to exercise all the powers mentioned in section 10 in respect of the property referred to in clause (d) of that section is resisted or obstructed by a party. Under section 10 of the Indian Telegraph act, 1885, the telegraph authority has no objection to maintain the telegraph lines under,

over, along, or across, and posts in or upon, any immovable property on various conditions and subject to various proviso. The telegraph authority is defined under section 3(6) of the Indian Telegraph Act, 1885 which means “the Director – General of Posts and Telegraphs and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under the said Act.

69. Section 10(b) of the said Act provides that 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. It is thus clear that though the respondent no.1 had obstructed the excavation work as far back as on 26th December, 2017, the respondent no.2 did not apply for any appropriate order before the learned District Magistrate under section 16 of the Indian Telegraph Act, 1885 till 26th April, 2018. The respondent no.2 also did not seek any consent from the authority under the provisions of the Indian Telegraph Act, 1885 or under the provisions of the Electricity Act, 2003 or any further directions from the authority under the provisions of those Acts. Admittedly neither the petitioner nor the respondent no.2 obtained any consent of the respondent no.1 before starting any excavation activity on the suit plot.

70. A perusal of section 10 of the Indian Telegraph Act, 1885 clearly indicates that the powers described under the said provision can be exercised by the telegraph authority only for the purpose of telegraph established or maintained by the Central Government or to be so established or maintained. A perusal of the permission

granted by the respondent no.2 in favour of the petitioner indicates that the respondent no.2 is the transmission licensee as contemplated under sections 2(73) and 39 of the Electricity Act, 2003. It is the case of the respondent no.2 itself that the petitioner is only the consumer of the Maharashtra State Electricity Company Limited availing 19.2 MVA power. The cost estimate had been prepared considering the load requirement of the petitioner at Kalyan Murbad Road, Shahad, District Thane under the change distribution facility on various terms and conditions.

71. The condition no.2(a) clearly provided that the right of way problem for laying of line is to be sorted out by the plaintiff at their cost. The powers of the licensee under section 16 read with section 10 of the Indian Telegraph Act, 1885 cannot be assigned or delegated in favour of any third party and more particularly in favour of any consumer. I am not inclined to accept the submission of Ms.Chavan, learned counsel for the petitioner that the entire supervision of the work carried out by the petitioner was to be carried out by the respondent no.2 and all the approvals were to be granted by the respondent no.2 or various materials were to be procured by the petitioner only from the approved vendors of the respondent no.2 and thus the powers of the licensee granted under the provisions of the Indian Telegraph Act, 1885 were exercised by the petitioner.

72. The petitioner being an individual entity and was granted permission as dedicated distribution facility, I am not thus inclined to accept the submission made by the learned counsel for the petitioner that the petitioner would fall within the ambit of the term

“user” as contained in the State Grid Code. The petitioner could not demonstrate before this Court that across the country and the State of Maharashtra, under supervision of different distribution licensees particularly the state utilities have always carried on payment of supervision charges to ensure speedy work. Be that as it may, the learned counsel for the petitioner could not demonstrate before this court under any of the provisions of the Indian Telegraph Act, 1885 or the Electricity Act, 2003, the licensee could delegate the powers granted under those provisions in favour of the consumer or any third party. In my view, Mr. Godbole, learned counsel for the respondent no.1 is right in his submission that by granting such permission as dedicated distribution facility (DDF), no public interest is involved or that no powers could be delegated by the respondent no.2 in favour of the petitioner.

73. In my view, the discretionary powers or other rights available to the respondent no.2 under the provisions of the Electricity Act, 2003 or under the provisions of the Indian Telegraph Act, 1885 are not capable of being delegated. The petitioner thus could not have commenced any excavation activities on the land claimed and owned by the respondent no.1 without its permission or no objection.

74. Be that as it may, since the respondent no.1 had raised an objection and had obstructed the excavation activities immediately upon its commencement, the respondent no.2 ought to have applied for requisite permission under section 16(1) and other relevant provisions of the Indian Telegraph Act, 1885 from the learned District Magistrate immediately and till such permission was

obtained from the learned District Magistrate, the respondent no.2 itself or the respondent no.2 could not have permitted the petitioner to carry out any excavation activities on the plot of the respondent no.1 without obtaining prior consent of the respondent no.1. In my view, in these circumstances, learned trial Judge was correct in granting interim relief in favour of the respondent no.1. Learned District Judge also rightly dismissed the appeal preferred by the petitioner.

75. In my view, the permission granted by the respondent no.2 in favour of the petitioner clearly indicated that it was an obligation of the petitioner to sort out the right of way problem, if any, at its own costs. The petitioner however, did not obtain any consent or no objection from the respondent no.1 before the commencement of the excavation activities or even thereafter.

76. Insofar as the submission of the learned counsel for the petitioner that the entire work carried out on the suit land of the petitioner during the period when an order of *status-quo* granted by the learned District Judge was in force is concerned, in my view, there is no substance in this submission of the learned counsel for the petitioner. No such proof has been produced by the petitioner before this Court. Be that as it may, such order of *status-quo* passed by the learned District Judge was ultimately set aside by this Court by consent of parties in the writ petition filed by the respondent no.1. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the right of the respondent no.1, if any, would be only by way of seeking compensation under the provisions of section 16 of the Indian

Telegraph Act, 1885 and nothing more than such rights.

77. Learned counsel for the petitioner could not dispute before this Court that the petitioner had obtained the consent of several other land owners on whose land similar activities were carried out by the petitioner. In my view, there is no merit in the submission made by the learned counsel for the petitioner that those permissions were taken by the petitioner only where the title of the land owners in respect of those lands was clear. If the title of the respondent no.1 would not have been cleared, the respondent no.2 would not have applied for permission under section 16(1) to 16(4) of the Indian Telegraph act, 1885 before the learned District Magistrate in respect of the suit land and more particularly for compensation payable to the respondent no.1.

78. Learned District Judge also rightly rendered various findings that in case of obstruction, the telegraph authority was under an obligation to approach the learned District Magistrate for seeking permission to exercise the powers under section 10 of the Indian Telegraph act, 1885 which application was not made immediately upon the respondent no.1 raising objection. Though the learned counsel for the petitioner raised an issue that the learned District Judge did not give an opportunity to produce subsequent events on record, the fact remains that no such permission was sought by the respondent no.2 to exercise the powers under section 10 of the Indian Telegraph act, 1885 when the respondent no.1 had obstructed the excavation activities started by the respondent no.3 on behalf of the petitioner. The application under sections 16(1) to 16(4) of the Indian Telegraph act, 1885 was

admittedly made for the first time by the respondent no.2 only on 26th April, 2018. No application under Order XXXIX Rule 27 of the Code of Civil Procedure was filed by the petitioner before the learned District Judge. In my view, even otherwise, the said permission applied by the respondent no.2 much after substantial part of the work was carried out by the petition was of no significance.

79. In my view, Mr.Godbole, learned counsel for the respondent no.1 is right in his submission that section 164 of the Electricity Act, 2003 cannot be read in isolation and has to be read with section 67 of the said Act. The authority is empowered to grant permission in cases and circumstances in which the consent in writing of a appropriate Government, local authority, owner or occupier, shall be required for carrying out the works even if the owner or the occupier raises an objection to the carrying out of the works however, on various terms and conditions. No such consent was obtained or the permission was sought by the respondent no.2 under section 67 of the Electricity Act, 2003.

80. The Division Bench of this Court in case of **Jarnail Singh** (supra) has held that the section 164 of the Electricity Act authorizes appropriate Government to confer power of telegraph authority upon a licensee or any public officer or any other officer engaged in business of supplying electricity for such purposes as placing of electric lines, electric plant for transmission of electricity or telephonic or telegraphic communication necessary for proper co-ordination of works. It is held that the powers under section 10 of the Indian Telegraph Act, 1885 vested in the telegraph authority

does not allow the authority to use the power for any other purpose thereof keeping it moored to the object of the Act which is manifestly to empower adequately the Government or any licensee to place telephone lines, and posts, a work eminently in public interest. The powers under section 10 is not unrestricted or uncanalised. The said power given to the telegraph authority is only for the limited purpose of establishing or maintaining the telephone. It is no less and no more than the said purpose.

81. It is further held that the said power does not give any right to the telegraph authority other than that the user only in respect of the property under, over, along or across on the telegraph line basis. The telephone authority does not become the owner of the said property but has only right of user of the property. Such powers cannot be exercised arbitrarily and in violation of interest of justice. In my view, section 164 of the Electricity Act, 2003 does not empower the respondent no.2 to delegate any such powers vested in the respondent no.2, in favour of the petitioner. The judgment of this Court in case of **Jarnail Singh** (supra) thus would assist the case of the respondent no.1 and not the petitioner.

82. Insofar as the judgment of the Hon'ble Supreme Court in case of **Cotton Corporation of India Limited** (supra) relied upon by Ms.Chavan, learned counsel for the petitioner in support of the submission that since the final relief cannot be granted in favour of the respondent no.1 under section 41(b) of the Specific Relief Act, 1963 read with section 37, no injunction could have been granted by the two Courts below is concerned, in my view, there is no merit in this submission made by the learned counsel for the petitioner for

the reason that the respondent no.1 has not prayed for acquisition of the land. The judgment of the Hon'ble Supreme Court in case of **Cotton Corporation of India Limited** (supra) thus would not assist the case of the petitioner.

83. Insofar as the judgment of this Court in case of **Orange City Mobile Collection** (supra) relied upon by the learned counsel for the petitioner is concerned, in my view, the said judgment of this Court would not assist the case of the petitioner. No application was made by the petitioner under Order LVII Rule 27 of the Code of Civil Procedure, 1908 before the learned District Judge.

84. Insofar as the judgment of the Hon'ble Supreme Court in case of **Dhariwal Industries Ltd. & Anr.** (supra) relied upon by the learned counsel for the petitioner is concerned, the said judgment would also not assist the case of the petitioner on the ground that no application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 was made by the petitioner before the learned District Magistrate. Similarly the judgment of the Hon'ble Supreme Court in case of **Adil Jamshed Frenchman** (supra) relied upon by the learned counsel for the petitioner also would not assist the case of the petitioner on similar grounds.

85. In my view, in the facts and circumstances of this case, though the learned District Judge rejected the appeal on several grounds, including on the ground that the petitioner had not brought on record any subsequent developments as the same was not on affidavit, the fact remains that no such application under section 16(1) to 16(4) read with section 10 of the Indian Telegraph Act,

1885 was made by the respondent no.2 before the learned District Magistrate when the objection was raised by the respondent no.1 in view of excavation commenced on the suit land by the respondent no.3 on behalf of the petitioner. In my view, no such post facto sanction could be applied by the respondent no.2 before the learned District Magistrate. Since the petitioner had not obtained any consent or no objection from the respondent no.1 before carrying out any excavation or other acts on the suit land, the respondent no.2 ought to have stopped the petitioner from carrying out any such activities which was not in accordance with the terms and conditions of the permission granted by the respondent no.2 in favour of the petitioner. No prejudice or any loss is thus caused to the petitioner in view of the learned District Judge dismissing the appeal filed by the petitioner also on the ground that subsequent developments could not be considered since there was no affidavit in support of the statement on the point of subsequent developments.

86. In my view, the learned District Judge is right in holding that the licensee was not empowered by the State Government under section 51 of the Electricity Act, 2003 which is in para mataria with section 161 of the Electricity Act, 2003 for placing any electric supply line in, over any property without the consent of the owner or occupier.

87. Insofar as the compilation of documents produced by Mr.Joshi, learned counsel for the respondent no.2 on record after conclusion of arguments is concerned, even those documents would not indicate that the learned District Magistrate has passed

any order of compensation in favour of the respondent no.1 or issued any directions allowing an application dated 26th April, 2018 filed by the respondent no.2 under section 16(1) to 16(4) read with section 10 of the Indian Telegraph Act, 1885.

88. In my view, both the Courts have after considering the pleadings, documents, various provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885 rightly granted an injunction in favour of the respondent no.1 and have rendered various *prima-facie* findings. I do not find any infirmity in the *prima-facie* findings rendered by the two Courts below. No case is thus made out by the petitioner for interference with the orders passed by the two Courts below. For the reasons recorded aforesaid, the petition is devoid of merit.

89. I therefore, pass the following order :-

- a). The Writ Petition (Stamp) No.19175 of 2018 is dismissed.
- b). There shall be no order as to costs.

(R.D. DHANUKA, J.)