

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2019

Date of Verdict: 11.04.2019

Coram

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.A.No.79 of 2019
and
C.M.P.No.747 of 2019

1.R.Raja
2.P.Munusamy
3.M.Ammasi
4.K.Kannammal

... Appellants / Petitioner

vs.

1. The District Collector,
Dharmapuri District,
Dharmapuri.

2. The Assistant General Manager,
Power Grid Corporation of India,
Tirupattur HVDC TLC,
No.185, TNHB Phase II,
Dharmapuri Main Road,
Tirupattur - 635 601.

... Respondents 1 & 2 /
Respondents

3. V.Shankar
4. V.Jayaraman

... Respondents 3 & 4 /
Petitioner 1 & 2

Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.30124 of 2018 dated 07.12.2018.

Prayer in W.P.No.30124 of 2018: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus or any other appropriate Writ Order or Direction to call for the records of the Proceedings of the 1st Respondent in Na.Ka.No.16950/2018/B2 (previously Na.Ka.No:10687/2018/B2) and Na.Ka.No.10687/2018/B2 dated 27.10.18 (served on 09.11.2018, 10.11.2018 & 12.11.2018) and quash the same, and consequently directing the 1st Respondent to consider

the Petitioners' objections after furnishing the petitioner with the prior approval for the Project by the Central Government, Route Map of the Project, Government Approval, Route Approval, Angle Deviation, GPS Co-Ordinates, distances between the Towers, No. of Towers, Nature of Towers, Approval Survey, Paper Publication, Gazette Notification, Project Report, Social Impact Assessment/Report, Guidelines for Safety Measures, Documents relations to Crop Compensations & Compensation for diminution of Land Value with respect to the Implementation of the Pugalur to Raigarh 800 KV Power Transmission Project in the lands of the petitioners and also giving the petitioners reasonable opportunity within a time frame fixed by this Court.

For Appellants : Mr.V.Raghavachari
for Mr.M.Easan
for M/s.Va Vu Si Vazhakagam

For Respondents : Mr.P.H.Arvinth Pandian,
Addl. Advocate General
assisted by
Mr.P.S.Sivashanmugha Sundaram,
Spl. Govt. Pleader for R1
Mr.R.Thiagarajan,
Sr. Counsel
for Mr.Kalyanaraman
for M/s.Aiyar and Dolia for R2

JUDGMENT

M.M.SUNDRESH, J.

This appeal is preferred against the order of the learned single judge, who, declined to interfere with the orders passed by the first respondent in exercise of the power under Section 16 of the Indian Telegraph Act, 1885 (hereinafter referred to as 'the Act').

2. Facts in brief:

(i) Before proceeding further to deal with the submissions made by the learned counsel appearing for the parties, it would be appropriate to place on record the background facts including the role of the second respondent, scope of the enactments coupled with jurisdiction of this Court.

(ii) The second respondent is a Government of India Enterprise and The Central Transmission Utility working under the aegis of the Ministry of Power. We are concerned in this appeal with the role of the second respondent in the project undertaken by it, as can be seen from the following paragraphs

of the affidavit filed by it:

"3..... It is a Corporation of National Importance incorporated as a "Government Company", under the provisions of the Companies Act, 1956, and is established with a view to develop an efficient Power Transmission System Network and is responsible for planning and coordination of inter-state transmission system and also responsible for establishment and operation of the Regional and National Power Grids, to facilitate transfer of power within and across the regions and is a Deemed Transmission Licensee in the capacity of "Central Transmission Utility" as envisaged under Sections 38 & 40 of The Electricity Act, 2003 as notified, vide Notification dated 27th November, 2003, published vide Gazette of India No.1084 dated 4th December 2003.

4. I submit that the Corporation is empowered under the provisions of the Electricity Act, 2003 (hereinafter referred to as the Electricity Act) and the Indian Telegraph Act, 1885 (hereinafter referred to as the Telegraph Act) to place and maintain power transmission Towers and to draw transmission lines under, over, along or across, and posts in or upon, any immovable property. Further, the aforesaid statutes, provide for the manner of removal of resistance/obstructions coming in the way of exercise of the powers conferred. The relevant provisions of the aforesaid enactments are discussed hereunder:

- a. As per Section 14 of 'The Electricity Act, 2003', 'Central Transmission Utility' shall be deemed to be a 'Transmission Licensee' under the Act.
- b. As per Sec.164 of 'The Electricity Act, 2003' the Appropriate Government may by order in writing for the placing of electric lines or electrical plant for the transmission of electricity confer upon the 'Licensee' any of the powers which the Telegraph Authority possesses under the Indian Telegraph Act, 1885.
- c. The Government of India in exercise of powers conferred under Sec.164 of "The Electricity Act 2003" had passed an Order dated 24.12.2003, vide Gazette of India No.1148 authorizing this Respondent to exercise all powers vested in the Telegraph Authority under part III of the

Indian Telegraph Act, 1885, in respect of Electrical Lines and Electrical plants established or maintained, or to be so established or maintained for Transmission of Electricity or for the purpose of Telephonic or Telegraphic communication, necessary for the proper co-ordination of the works.

d. This Respondent submits that Part III of the Indian Telegraph Act, 1885, relates to power to place Telegraph Lines and Posts. Under Section 10 thereof, the telegraph authority may, from time to time, place and maintain telegraph lines under, over, along or across, and posts in or upon, any immovable property, provided that (a)..... (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 Telegraphic Line or Post, and (c) , (d) in the exercise of the powers conferred by Section 10, the telegraphic authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that of the local authority, it shall pay compensation, to all persons interested, for any damage sustained by them by reasons of exercise of those powers. Section 11 empowers the telegraphic authority at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, to enter on the property under, over, along, across, in or upon which the line or post has been placed."

X X X

6.I submit that this Respondent has been entrusted with the task of construction/execution of scheme/s-

- (i) Raigarh - Pugalur 6000 MW HVDC System
- (ii) AC System strengthening at Pugalur end
- (iii) Pugalur - Trichur 2000 MW VSC Based HVDC System,

under prior approval of Ministry of Power, Central Electricity Authority- Government of India under Ref No.52/11 (PGCIL)/2015-PSP&PA-II/251-252 dated 29.09.2015.

The subject matter of this Writ Petition pertains to Raigarh-Pugalur 6000 MW HVDC system with a 800 kV HVDC Transmission Line without any tapping in between connecting Raigarh in the State of Chattisgarh and Pugalur in the State of Tamil Nadu to facilitate evacuation and transfer of power various Generation plants located in the State of Chattisgarh state which passes through Chattisgarh, Maharashtra, Telangana, Andhra Pradesh & Tamil Nadu. The total length of the transmission line is 1843 Kms out of which 345 Kms passes through the State of Tamil Nadu. This project is one of the biggest power transmission project in India and the State of Tamil Nadu is the major beneficiary.

7. I state that the total cost of the project is about Rs.24,000 crores. The cost of the Transmission Project connecting Raigarh and Pugalur is estimated at Rs.19,000 crores including the Sub-stations at Raigarh and Pugalur. Under Scheme I of the project ±800 kv Bipole HDVC link connects Raigarh (Chattisgarh) HDVC Station and Pugalur (Tamil Nadu) HDVC Station. The line length is 1,843 Kms directly connecting both the HDVC Terminal having capacity of 6000 MW. Under Scheme II, AC system strengthening, there are 5 double circuit 400 kV HVAC lines connecting Pugalur, Arasur, Udumalpet, Tiruvallam, (POWERGRID) and Edayarpalayam (TANTRANSCO) Sub-stations. Under the Scheme, major beneficiary is the State of Tamil Nadu.

8. Under Scheme I, viz., the line connecting Raigarh and Pugalur the length of the transmission line is about 345 kms in the State of Tamil Nadu consisting of 966 towers. The schedule for project completion is May 2019. As on date, foundation works for erection of 620 Towers have been completed for the entire project area. Erection of towers numbering 483 has been completed. Stringing work of about 45KMs has also been completed and the balance works are in full swing. I state that as far Dharmapuri District is concerned, 184 towers are proposed covering 69 kms. Out of 184 towers, foundation works in 170 locations have been completed. Erection of towers numbering 152 have been completed and the stringing of 8.44 km out of 69 km completed and the works are in progress. I state that in Dharmapuri District, out of 500 land owners (approx), 261 have received crop compensation to the tune of Rs.5.51 crores and tree compensation to an extent of Rs.7.91 crores."

3.While implementing the erection of towers, the following procedure is adopted:

"Procedure for erection of towers

- 1.The entire distance of 1845 kms from Raigarh to Pugalur is divided into packages viz., 10 packages.
- 2.Each package is for about 180 kms.
- 3.For Tamil Nadu, 345 kms is divided into 2 packages viz., Package 9 and 10.
- 4.A straight line is drawn between Raigarh and Pugalur.
- 5.Regarding Tamil Nadu, the starting point is Chittoor. A straight line called "BEE LINE" is drawn from Chittoor to Pugalur.
- 6.The Engineers go along the BEE LINE as nearly as possible avoiding settlements, Railway line, Road crossing, River, Forest.
- 7.They conduct a walk over survey.
8. They propose three alternate routes to find out which is the most economically and technically feasible route.
9. Then the Angle points are also fixed.
10. Thereafter, a detailed survey is made.
11. The above exercises are shown in the Map.
12. The next stage is whatever is there in the Map is transferred to the ground viz., marked in the ground.
13. The angle points are fixed on ground by using Global Positioning System (GPS) instruments.
14. The ground level is then checked. Geographical details are collected and line peg mark fixed.
15. A profile is made on the above details.
16. Then for every 20 meters, ground level measurement is taken.
17. Normally, the space between two towers is 400 meters. The span will depend on the ground level, road, railway track, river and settlements and technical aspects.
18. Then the tower schedule is prepared.
19. On due approval of the above, check survey is done.
20. Exact tower point is fixed with the help of survey instrument.
21. It is only at that stage, we know that exact survey number over which the tower is to be located.
22. After fixing the tower location, the details as to the ownership and the person who is the owner of the land are obtained from the revenue authorities."

4. Thus, the second respondent does not know the exact survey numbers, extent of land and the identity of the persons on whose lands, transmission towers were to be erected. Once suit lands are identified, approval is accorded for erecting the transmission towers.

5. It appears that the transmission tower lines were proposed to pass through the lands of the appellants. They raised their objections and further writ petitions were filed and directions were issued to the first respondent to consider them. The second respondent also approached the first respondent seeking to invoke Section 16 of the Act. Summons were issued to the appellants for their appearance. While declining to appear, the appellants sought for numerous documents running to 14 numbers. Incidentally, they made requests to make measurements in their presence along with an expert of their own. As the requests made were not acceded to, they declined to appear before the first respondent. Having no other option and taking note of the fact that the second respondent has also sought for removal of obstruction, the impugned orders had been passed, inter alia, holding that the project is an absolute necessity in public interest and the short term crops can be raised at the places in which the lines were drawn, adequate compensation would be paid there is no possibility of considering the alternative route and the project nearing completion. Accordingly, the orders were passed in favour of the second respondent granting permission under Section 16 (1) of the Act.

6. Though two of the writ petitioners did receive compensation, challenges were made by them along with others to the orders passed by the first respondent. The learned single Judge by an elaborate order rejected all the contentions raised including the entitlement to get the documents sought for. Before the learned single Judge, numerous documents have been filed and the officers were present and explained the method adopted. It is stated that three of the appellants have also received compensation for the transmission tower lines that have been laid through their lands.

7. Mr.V.Raghavacahri, learned counsel appearing for the appellants vehemently contended that every thing is shrouded with mystery. There is a reasonable apprehension that the original plan was deviated for the reasons known. The documents sought for ought to have been furnished. A narrow restrictive interpretation cannot be given to Section 10 r/w 16 of the Act. This Court can certainly exercise its extraordinary jurisdiction and come to the aid of the appellants. In support of his submission, reliance has been made on the following decisions:

- (i) R.Santhana Raj Vs. The Chief Engineer, Non-Conventional Energy Source (2012 (1) CTC 504)
- (ii) The State of U.P. vs. Raj Narain and Others ((1975) 4 SCC 428)
- (iii) P.Arimutharasu Vs. The Superintending Engineer (Wind Farm Project) TNEB & Others (Madurai Bench) (2015-1 L.W. 353)
- (iv) P.Balamani and Others Vs. The District Magistrate and District Collector and Ors. (2008(2) CTC 555)
- (v) Reliance Petrochemicals Ltd., Vs. Proprietors of Indian Express News Papers, Bombay Pvt. Ltd., and Others ((1988) 4 SCC 592)
- (vi) M.Nagaraj and Others Vs. Union of India and Others ((2006) 8 SCC 212)
- (vii) Natwar Singh Vs. Director of Enforcement and Another ((2010) 13 SCC 255)
- (viii) Indian Soaps and Toiletries Makers Association Vs. Ozair Husain and Others ((2013) 3 SCC 641)
- (ix) Chingleput Bottlers Vs. Majestic Bottling Company ((1984) 3 SCC 258)
- (x) N.Lakshmi Vs. The District Collector, Erode and Others (W.P.No.20360 of 2016 dated 19.04.2017)
- (xi) Indu Bhushan Dwivedi Vs. State of Jharkhand and Another ((2010) 11 SCC 278)

8. Learned senior counsel appearing for the second respondent would submit that it is not an acquisition as such. The issue involved has been dealt with on numerous occasions by the Courts including the Apex Court. Therefore, there is no right involving acquisition but only an user in the property. The second respondent is the authority to whom the authorization has been given by the Central Government under Section 164 of The Electricity Act, 2003 by the order dated 24.12.2003. The scope of Section 16 of the Act is to facilitate proper implementation of the Scheme. Sections 10 and 16 are to be read together. Now the entire scheme is at an advanced stage. The overall public interest has to be seen. It actually cuts across several States. The second respondent being a statutory authority has acted in good faith. A writ petition cannot be entertained on mere allegation and surmises, therefore, the appeal will have to be dismissed. More so, when work is already done and two of the writ petitioners/respondents and one of the appellants have already received the compensation. To buttress his submissions, reliance has been made on the following decisions:

- (i) R.Kannan Vs. Power Grid Corporation (India) Limited and Others (W.A.No.464 of 2008 dated 10.04.2008)

(ii) C.Ram Prakash and Another Vs. Power Grid Corporation (India) Limited and Others (2011-4 L.W. 924)

(iii) Sri Vignesh Yarns Pvt. Ltd., Vs. S.Subramaniam ((2013) 1 MLJ 56)

(iv) Power Grid Corporation (India) Limited Vs. Century Textiles and Industries Limited and Others ((2017) 5 SCC 143)

9. We do not wish to reproduce various judgments on the interpretation of the provisions governing. They have been dealt with in extenso by this Court and the Apex Court in numerous cases. Suffice it to refer to the recent judgment of the Apex Court in Power Grid Corporation (India) Limited Vs. Century Textiles and Industries Limited and Others ((2017) 5 SCC 143), wherein it has been held as under:

"23. Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers."

Thus, Section 10 of the Act confers powers to the second respondent to place and maintain telegraphic lines and posts. We have no difficulty in holding that there is an adequate authorisation given to the second respondent by the Government of India in exercise of power under Section 164 of The Electricity Act, 2003 by the order dated 24.12.2003.

10. On the scope of Section 16 of the Act vis-a-vis Section 10, the Division Bench of this Court in (ii) C.Ram Prakash and Another Vs. Power Grid Corporation (India) Limited and Others (2011-4 L.W. 924) in which one of us (MMSJ) is a party and author has held as follows:

"22. Scope of Sections 10 and 16 of the Indian Telegraph Act, 1885: The power under Section 10 of the Indian Telegraph Act, 1885 is rather wide and extensive. While exercising the power, it is not necessary for the Respondent No. 1 to put the individuals, who owned the land on notice. Admittedly, the Respondent No. 1 has got power under Sections 10 and 16 of the Indian Telegraph Act, 1885. Such a power has been conferred upon the Respondent No. 1 in public interest. The exercise of the said power by erecting the towers with overhead lines would not amount to an acquisition. It is true that such an action would diminish the value of the property of an individual, but at the same time it cannot be termed as an acquisition. Since Section 16 of the Indian Telegraph Act, 1885 provides mechanism of compensation, the Appellants can have no grievance.

23. Section 16 of the Indian Telegraph Act provides for a mechanism by which the Respondent No. 1 can approach the second Respondent, if there is an obstruction or resistance. It is not necessary that in each and every case the Respondent No. 1 will have to approach the second Respondent whenever there is an objection. The word objection has got a different connotation than the words resistance or obstruction. A resistance or obstruction would mean preventing the statutory body from carrying out the public duty. Whereas an objection is merely a form of protest. Further, under Section 16 of the Indian Telegraph Act, the Respondent No. 2 has got no power to go into the merits of the case and find out as to whether the alignment proposed is correct or not and there is any possibility of realignment. The prescription of Section 16 of the Indian Telegraph Act is very specific to provide aid to the Respondent No. 1 to perform its statutory duty. Considering the scope of Section 10 of the Indian Telegraph Act vis-a-vis Section 16 of the Indian Telegraph Act, it has been held by the Division Bench of the Delhi High Court in *Scindia Potteries v. Purolator India Ltd.* MANU/DE/0189/1980 : AIR 1980 Delhi 157 as follows: 9... The exercise of power under Section 10 is not conditional on compliance with the provisions of Section 16(1)

of the Act. The power given under Section 10 is absolute. It is only when there is a resistance or obstruction in the exercise of that power that the occasion to approach the District Magistrate arises. If there is no resistance or obstruction, there is no occasion for the telegraph authority to approach the District Magistrate. The alleged oral protest relied upon by the Appellant appears to us to be a made up story. Two telegraph poles were affixed on the Appellants' property in February, 1974. The telephone lines and connections were thereafter given from time to time. Till the landlord-tenant dispute arose between the Appellant and M/S. Purolator India Ltd., no objection was raised by the Appellant. No doubt in April, 1978 the Appellant gave notice to the telegraph authority under Sections 17 and 19A of the Act and may be that the telephone connections in May, 1978 can be treated as the ones objected to but then Sections 17 and 19A have a different purport. The resistance and obstruction envisaged by Section 16(1) of the Act is different. This will be clear on a reading of Sub-section (1) of Section 16 of the Act. It is for the purpose of Section 188 I.P.C. that an application is to be given under Section 16(1) of the Act to the District Magistrate. Section 188, I.P.C. makes the disobedience of an order duly promulgated by the public servant an offence. Section 16 is really in aid of the discharge of statutory duty and exercise of statutory power postulated by Section 10. We are in respectful agreement with the ratio laid down therein."

11. Thus, in view of the same, nothing more is to be stated. In fact, we have also called the officer concerned and perused the records. We also permitted the learned counsel for the appellants to do so. The officer has also explained the procedure which we have recorded supra. We do not find any malice in law or fact. The second respondent is carrying out its statutory duty. Now the entire project is over insofar as the appellants are concerned. We may note that two of the writ petitioners also joined the other in filing the writ petitions after receiving compensation, which cannot be appreciated. Similarly, one of the appellants has also received the compensation amount. It is the appellants who approached the first respondent and for the reasons known, they did not appear for hearing. They have asked for numerous documents, which is

for the purpose of dragging on the proceedings. Order under Section 16(1) of the Act was passed not only on the request of the appellants but also that of the second respondent. The role available to first respondent is rather limited. It is neither a supervisory nor an adjudicating authority over the second respondent. When the element of expertise is involved and the same is undertaken by the statutory body as per law, the power of judicial review will have to be entertained with extreme caution. We cannot interfere with the matter on some apprehension expressed by the appellants. Now the substantial part of the project is over insofar as the appellants are concerned. We are not dealing with an acquisition per se. There is no material available to controvert the reasoning in the impugned orders. Admittedly, there is overwhelming public interest exists in favour of the second respondent. Every delay would cause serious financial implications among others. It might have a spiralling effect on the project as well. The appellants cannot ask the first respondent to direct the second respondent to furnish all the documents which they seek. There is no arbitrariness in the procedure adopted by the second respondent. Certainly, the appellants can seek for appropriate compensation for the diminishing value of their lands caused by the overhead lines and erection of towers. Thus, we do not find any merits in this appeal.

Accordingly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Dharmapuri District, Dharmapuri.
2. The Assistant General Manager,
Power Grid Corporation of India,
Tirupattur HVDC TLC,
No.185, TNHB Phase II, Dharmapuri Main Road,
Tirupattur - 635 601.

+2 ccs to M/s.Va Vu Si Vazhakagam, Advocate, S.R.No.35532
+1 cc to M/s.Aiyar and Dolia, Advocate, S.R.No.35948

W.A.No.79 of 2019

BS (CO)
SSM(15/04/2019) .