

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI

W.P.No.13445 of 2010
and M.P.No.1 of 2010

N.Baskar

... Petitioner

Vs.

1.The Power Grid Corporation of India Limited
(A Govt of India Enterprise)
B-9, Qutab Institutional Area,
Katwaria Saai, New Delhi.

2.Power Grid Corporation of India Limited,
Regional Office,
SR-II, 33, Race Course Road,
Bangalore.

3.The Chief Manager,
Power Grid Corporation Of India Limited,
400 KV Sub Station, Pennalur,
Sriperumbudur 602 105.

4.The District Magistrate and District Collector,
Kanchipuram District,
Kanchipuram.

... Respondents

PRAYER: Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ or order or direction, particularly in the nature of writ of Certiorarified Mandamus calling for the records of the 3rd respondent in connection with their order in Ref.298 dated 26.05.2010 and quash the same consequently direct the respondents to grant compensation in accordance with law to the petitioners for the damages and loss caused by them.

For Petitioner : Mr.Mr.A.R.L.Sundaresan Senior Counsel
for Mr.C.Kasirajan
For Respondent : Mr.Jeyesh & Dolia
for M/s.Aiyar & Dolia for R1 to R3
Mrs.K.Bhuvanewari
Additional Government Pleader for R4

ORDER

The case of the petitioner is that he is carrying on the business of developing the land into layouts by acquiring various parcels of land from various owners, making them contiguous and forming housing plot thereon, providing open space, public roads, culverts etc., and selling the same to various persons who are desirous of purchasing the said house sites. The petitioner further states that he has doing the said business in accordance with law on obtaining necessary permission from the concerned authorities. On the course of his business, the petitioner purchased the developed layout of house sites over an extent of 1,78,650 sq.ft of land in S.Nos.262/3A, 3B, 4A, 4B, 5A, 5B, 8A, 8B, 9A, 9B, 262/10A, 10B, 54/3 O part and 3P, of No.196 of Kavanur Village, Sriperumputhur Taluk, Kancheepuram District. The said layouts are approved by the Maraimalai Nagar Township by proceedings bearing Ma.Va.U.E.No.519190 dated 01.08.1990, pursuant to the resolution which was passed by the Kundrathur Panchayat Union under Ref.No.R.C.No.1967/91 dated 03.04.1992 and Ma.Va/Na.U.E.591 dated 01.08.1990. The petitioner selling the house plots to various persons who are desirous of purchasing the same, in order to construct the residential houses thereon and still hold large extent of housing plots for sale. As such among the other plots, plot Nos.28 to 44 is available for sale.

2. While being so, the Power Grid Corporation was constructing 400 KV Kolar-Sriperumpudur Line In Line Out line along with the 400 KV Kalivanthapattu Sub Station. Aggrieved by the same, the petitioner by approaching this Court has filed W.P.No.11598 of 2007, thereby restraining the respondents herein from erecting any pillar or post for the purpose of drawing power line with high tension power supply over the above said unsold plots or otherwise over the property to an extent of 1,78,650 sq.ft of land in S.Nos.262/3A, 3B, 4A, 4B, 5A, 5B, 8A, 8B, 9A, 9B, 262/10A, 10B, 54/3 O part and 3P of No.196 of Kavanur Village, Sriperumputhur Taluk, Kancheepuram District. This Court vide its order dated 30.03.2007 directed the 3rd respondent herein to approach the 4th respondent herein for permission to deal with the objection raised by the petitioner and the 4th respondent shall consider the objections and pass orders in accordance with law. The 4th respondent herein has passed an order dated 09.05.2008, thereby granted permission to the 3rd respondent to erect the power line as per alignment under Section 16(1) & (2) of Indian Telegraph Act.

3. The Power Grid Corporation deliberately drawing the power line over middle of my unsold plots stated above, which clearly shows that the duty under Section 10 (d) of the Indian Telegraph Act, 1885 to cause as little damage as possible, has not been

complied with. The present route is severing the petitioner's plots into several parts since 46 feet of land has to be kept in vacant and as such the said vacant area measuring to an extent of 36,946 sq.ft approximately in plot nos.28 to 44 comprised in S.Nos.262/3B, 262/4B, 262/5B, 262/8A, 262/9A cannot be used for construction of residential house/ permanent structure. In view of the above, in order to get compensation under Section 10(d) of the above said Act, the petitioner made a representation on 11.11.2008 to the respondents to fix compensation for the damages caused by him. As against the inaction of the respondents, the petitioner again approached this Court by filing writ petition in W.P.No.4981 of 2010 for writ of Mandamus directing the respondents to fix the appropriate compensation in accordance with law based on the petitioner representation dated 11.11.2008 and this Court vide order dated 11.03.2010, directed the respondents 1 to 3 to consider the petitioner's representation on merits and in accordance with law within two months from the date of receipt of that order and the respondents rejected the request of compensation. Thereafter, the 3rd respondent considered the representation of the petitioner and passed an order of rejection. Against the order of rejection, the petitioner has constrained to move this writ petition.

4. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing for the petitioner would submit that admittedly the respondents entered the petitioner's land and erected high tension tower 400 KV D/C Transmission line comprising 94 towers with the length of 30.673 Kms in plot nos.28 to 44. However the present issue before this Court only for payment of compensation for damages caused. Even on bare perusal of provisions of Section 10(d) of the above said Act, it makes it clear that the telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property, provided that the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them.

5. In the present case, the competent authority namely the 3rd respondent refused to pay the compensation, is unjustifiable. In fact Section 10(d) itself provides for payment of compensation, even any little damages being made by the authorities. In the present case, the petitioner is prevented from constructing buildings due to the restriction in the impugned order passed by the respondents. Hence non-payment of compensation for damages is highly unsustainable. In support of his contention, the learned Senior Counsel has also relied on the decision of the High Court of Kerala reported in AIR 1989

Kerala 198 (K.S.E.B., Vs. Cheriyan Varghese and others) and it is relevant to extract Paragraph no.16 of the same:

'16. We are clearly of the view that apart from the compensation for the damage done by the cutting of trees, the owner of the land is also entitled to compensation for any diminution in value of land that he has suffered for the reason of the drawal of overhead powerlines across his land. The diminution in value is to be determined with reference to the market value of land without trees before and after the drawal of the lines'.

6. Per contra, learned counsel appearing for the respondents would submit that though Section 10(d) of the said Act provides for compensation to the land owners, as per Section 16(4) of the said Act if any dispute arises with regard to compensation, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

7. Therefore, he would further submit that without availing the effective alternate remedy available before the District Judge, the petitioner approached this Court by filing this writ petition, is unsustainable one. In the present case though subsequent notice by the State Government vide G.O.Ms.No.63, Energy (A1) Department dated 22.11.2017 for payment of compensation, in paragraph no.4, the State Government has clearly stated that the compensation towards damages in regard to Right of way for transmission lines, subject to condition that it will be applicable only to new projects with prospective effect. However in the present case, power line was erected in the year 2008 and hence G.O.No.63 dated 22.11.2017 may not apply to the petitioner, since, the Government Order was only applied prospectively.

8. This Court is of the view that admittedly the respondents erected the high tension tower 400 KV D/C Transmission line comprising 94 towers with the length of 30.673 Kms in plot nos.28 to 44. The tower line was erected in the petitioner's plots and the same was approved by the local authorities and no trees were available at the time of erection of power line. Admittedly, it is house plots, in which the power line was erected and its line passing through across the petitioner's plots.

9. On perusal of the counter affidavit, in paragraph no.11, the respondents clearly admitted that 26 meters on either side of the alignment line, between two towers (along the route) is the electrical safety zone wherein trees beyond a particular height and permanent structures beyond safety clearance are prohibited. In case of interference or interruption of trees or is likely to interrupt with, the conveyance or transmission of electricity or the accessibility of any works, they are required to be cut/removed. However in the present case, there is no question of payment of compensation with regard to removal of trees and destroyed crops. In the present case, the power line is erected in the house land which was approved by the local authorities. It is an admitted fact that beyond certain limit, no construction work can be carried out. Even on perusal of the impugned order, it clearly shows that as per the technical specification transmission line corridor of 46 meters i.e. 23 meters on either side from the centre of the tower, all crops can be cultivated, fruit bearing trees of short height grown and building put up outside this corridor by maintaining safe electrical clearance as per Indian Electricity Rules. The impugned order further makes it clear that the petitioner has right to put up construction outside the corridor of 46 meters, they cannot put up any construction within 46 meters through which the power line passes through. It is clear that the petitioner is entitled to put up construction only outside the corridor. Hence definitely there was damages to the petitioner land because of erection of power line. Even on perusal of the judgment of High Court of Kerala (cited supra) paragraph no.16 makes it clear that the owner of the land is also entitled to compensation for any diminution in value of land that he has suffered for the reason of the drawal of overhead powerlines across his land.

10. In view of the above, I have no hesitation to interfere with the order of the respondents. The respondents have passed the order without taking into account of the damages suffered by the land loser, even Section 10(d) of the Act is provided for compensation and hence, the impugned order passed by the 3rd respondent in Ref. No.298 dated 26.05.2010 is set aside and the matter is remanded to the 3rd respondent for fair compensation for diminution in the value of the land.

11. The writ petition stands allowed with the above observation. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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B-9, Qutab Institutional Area,
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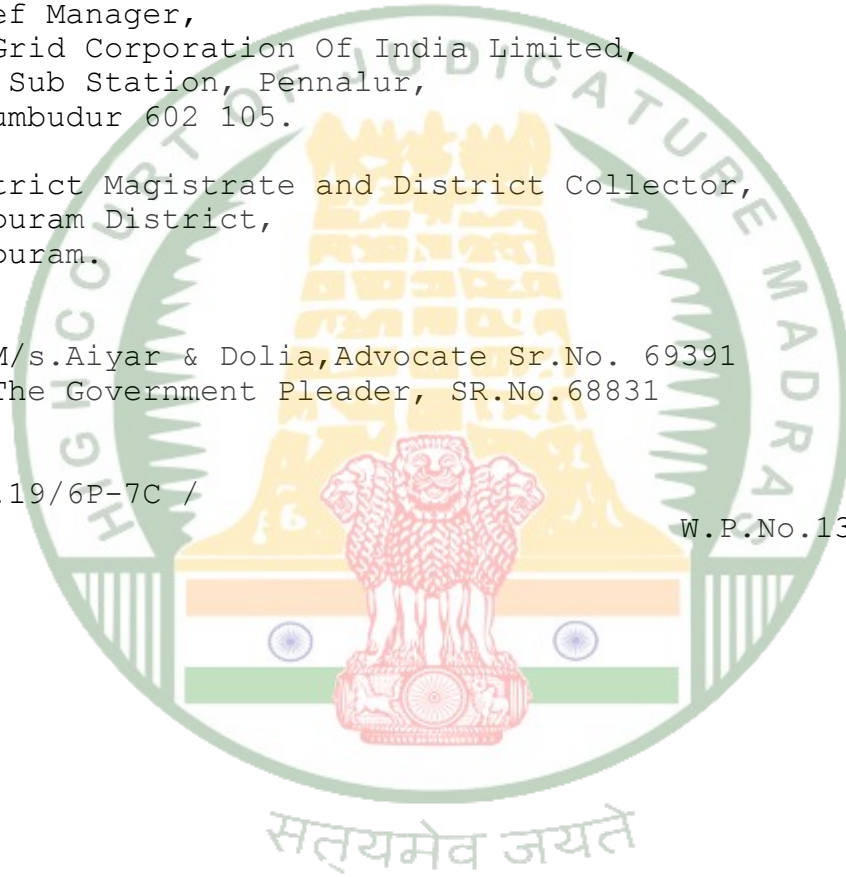
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+1 cc to M/s.Aiyar & Dolia,Advocate Sr.No. 69391
+1 cc to The Government Pleader, SR.No.68831

AKM/24.09.19/6P-7C /

W.P.No.13445 of 2010



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