

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.22128 of 2018

and

W.M.P.Nos.37613 & 25931 of 2018

M.Muthukrishnan

..Petitioner

vs

The Union Territory of Puducherry
Rep.by The Executive Engineer
Electricity Department
Govt.of Puducherry
Puducherry.

..Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondent to refer the dispute regarding the objection raised by the Petitioner for erection of 110 KV overhead lines along with tower on his land in R.S.No.18/5, Cadastre No.46/13/32 Pt, 46/17/32/1/5, 46/17/32/2/5, 46/10/32 Pt measuring about 1 Kani and 42 Kuzhi in Manapattu Revenue Village in Kattukuppam within Bahour Commune Panchayat in Puducherry to the District Magistrate, Puducherry for redressal as stipulated under S.16(1) The Indian Telegraph Act, 1885.

For Petitioner : Mr.S.Subramanian

For Respondent : Mr.Gandhi Raj, Government Pleader
(Puducherry)

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondent to refer the dispute regarding the objection raised by the Petitioner for erection of 110 KV overhead lines along with tower on his land in R.S.No.18/5, Cadastre No.46/13/32 Pt, 46/17/32/1/5, 46/17/32/2/5, 46/10/32 Pt measuring about 1 Kani and 42 Kuzhi in Manapattu Revenue Village in Kattukuppam within Bahour Commune Panchayat in Puducherry to the District Magistrate, Puducherry for redressal as stipulated under S.16(1) The Indian Telegraph Act, 1885.

2.The very relief sought for in the present writ petition itself is for a direction to direct the District Magistrate to adjudicate the grievances of the writ petitioner by invoking the provisions of the Indian Telegraph Act, 1885. Admittedly, due to increasing demand for electricity supply for domestic and industrial use in the Union territory of Puducherry and in order to provide reliable power supply to the general public in the event of any outage occurs in the LILO line of Bahour - Bahour 110KV line, the Electricity Department, Government of Puducherry has proposed a scheme to extend the second circuit of 110KV Villianur - Bahour feeder from 230/110KV Bahour Auto Sub - Station, and the erection of 110KV line work have been entrusted to the executing agency, M/s.Power Grid Corporation of India Limited. Pursuant to the Policy decision taken by the Government of Puducherry, the Power Grid Corporation of India Limited executed the works by commissioning High Tension Electric Towers in the agricultural land belong to the writ petitioner.

3.The learned counsel for the writ petitioner states that three such poles were commissioned in the property belongs to the writ petitioner and therefore, the agricultural activities of the writ petitioners are affected.

4.This Court is of an opinion that the grievances of the writ petitioner is to be addressed in a proper manner and in accordance with law. Undoubtedly, commissioning a High Tension power in the agricultural field may cause certain inconveniences to the agriculturists. However, the same would not affect the entire agricultural activities in the property. A small portion is occupied for the purpose of commissioning of such High Tension electricity powers in the agricultural lands. As far as the grant of compensation is concerned, the District Judge is competent to adjudicate the issues involved in respect of the commissioning of High Tension powers and grant adequate and just compensation to the persons affected from and out of such installments.

5.In the present case on hand, admittedly, the towers had already been commissioned and the learned Government Pleader, Puducherry made a submission that 7 towers out of 8, had already been installed and the entire works had been completed. One tower alone is to be completed and on account of the interim injunction granted, the Power Grid Corporation of India is unable to complete the work in entirety.

6.This Court is of an opinion that such welfare projects and the Government parties in the interest of public at large can never be stalled by the Courts in a routine manner. Adequate compensation and the procedures for claiming compensation are

very well provided under the statute. The persons aggrieved are entitled to claim compensation by submitting appropriate application and by adjudicating the issues on merits. Contrarily, grant of interim injunction and keeping the matter pending for years together will cause great prejudice to the public interest and electricity being an essential service, this Court is of an opinion that such projects can never be delayed nor be paralyzed by granting interim injunction.

7. In the present case on hand, the scope of the Electricity Act and the Indian Telegraph Act were adjudicated by this Court elaborately in W.P.No. 30124 of 2018 dated 07.12.2018 and the relevant paragraphs 35 to 40 are extracted hereunder:

"35. Thus, this Court is of the considered opinion that Article 300 A of the Constitution of India enumerates that " No person shall be deprived of his property save by authority of law". Thus, property right is a Constitutional right. Undoubtedly, a citizen of India has got a property right under the Constitution though it is not a fundamental right. The property right is no more a fundamental right. Thus, no person shall be deprived of his property save by authority of law. In order to countenance the Constitutional right of the citizen of this great nation, the respondents are bound to establish that they are implementing the Project for the welfare of the public under the authority of law.

36. In this regard it is to be noted that the Sections 68 and 164 of the Electricity Act, 2003 confers power to the Appropriate Government to erect Overhead lines for the transmission of electricity or for the purpose of telephonic and telegraphic communications. Section 164 of the Electricity Act, 2003 categorically enumerates that the Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained. Thus, the said

provisions empowers the Appropriate Government to grant permission.

37. In the present case, the second respondent is an organization of the Government of India. Ministry of power also approved the Project. The Project is for the larger interest of the public of our great nation. The transmission lines are planned to be erected from Raigarh of Chattisgarh to Pugalur, State of Tamil Nadu. The transmission lines are crossing through five major States across the country. Even in Tamil Nadu the transmission lines are being laid for the distance of about 345 km. This being the nature of the project, this Court is of an opinion that the writ petitioners have no say to obstruct the project, which is being implemented in the larger interest and for the development of our great nation. Consistent developmental activities of a welfare State is also a Constitutional Directive. Thus, the State is bound to implement the Welfare Schemes for the development of our great nation. Infrastructure facilities and all other developmental and technical activities are to be consistently improved in order to compete with all other countries across the globe. India, being a fast growing nation, cannot afford to suffer implementation of all such larger Welfare Schemes. The Welfare Schemes are once approved and if the schemes does not suffer from any Unconstitutionality or illegality, the Courts must be cautious in granting even any interim orders so as to cause an irreparable loss to the public interest as well as to the State exchequer. In the event of granting interim order or keeping the matter pending for an unspecified period or any postponement of all such Welfare Projects would further cause financial loss to the tax payers money. Delay in implementation of the projects would result in escalation in cost and such escalation would affect the interest of the tax payers money. Thus, all such schemes, if tested, must be considered at the earliest possible and if there is no prima facie case made out by the writ petitioners, the grant of interim order also to be restrained so as to ensure the public projects are not stalled on account of the personal ideologies of any person. However, citizens may have their own ideas and views. No doubt, the ideas and views of individuals are also to be respected. However, the larger interest of the public alone must prevail over the individual ideas. Overlooking the opinion of the committee of the Experts can never be considered at all. The Courts are bound to consider the grievances

of each and every citizen of this great nation. While considering the grievances of such citizen, there cannot be any compromise in respect of larger public interest as far as the implementation of the larger Welfare Schemes are considered. Thus, a balancing approach is to be adopted and principles of pragmatism are to be followed.

38. In the present Writ Petition, undoubtedly, transmission towers are being laid/proposed to be laid in the agricultural lands belonging to the writ petitioners. The Statute provides payment of compensation to the damage or loss if any caused. The quantum for compensation was arrived by the competent authority. If at all, the writ petitioners are aggrieved in respect of fixing of compensation, for the loss or damage, the petitioners are at liberty to approach the District Judge concerned for claiming compensation or enhancement or otherwise. Contrarily, the writ petitioners cannot obstruct the implementation of the scheme by stating that no consent has been obtained from them and such a consent is required under the law and it is an acquisition proceedings and the second respondent is the user of the land and transmission towers are commissioned without acquiring the land. Considering the nature of the scheme under implementation, this Court is of an opinion, with reference to the provisions of the Electricity Act, 2003 and the Indian Telegraph Act, 1885, that authorities competent are empowered to commission the transmission towers in the lands belonging to the writ petitioners and, if at all, the writ petitioners are aggrieved in any aspect, they are at liberty to approach the learned District Judge concerned for redressing their grievances in respect of claiming compensation alone. However, the project cannot be questioned by the writ petitioners on the ground that the project details are not furnished to them. For the purpose of commissioning the transmission towers, furnishing of entire projects details to the farmers are unnecessary and not contemplated under the Statutes. No purpose would be served even those documents are served on the writ petitioners. The writ petitioners have no locus standi to object the welfare schemes being implemented for the welfare of the citizen at large. Thus, the writ petitioners, even if not furnished with the documents, are not prejudiced as the scheme being implemented by virtue of the authority conferred under the provisions of the Statutes referred supra.

39. It is brought to the notice of this Court that the writ petitioners along with some other persons had indulged in filing number of cases before the Courts with an idea to stall the entire project. It is contended that Crl.O.P.No.28520 of 2018 was filed to forbear them from giving police protection in any manner aiding the Officials of the Power Grid Corporation Limited & the Revenue Officials in implementing the "800 KV Raigarh (HVDC Stn) - Pugalur HVDC Stn) HDVC Bipole link with MW capacity", unless those Officials obtain enter-upon permission under the provisions of the "Indian Telegraph Act, 1885" or "Works of Lincensees Rules, 2006". The said Crl.O.P was dismissed by this Court. This apart, even on earlier occasion, the petitioners filed writ petitions for a direction to dispose of the representation and the present writ petition is also challenging the order passed by the District Collector in proceeding dated 27.10.2018 for removal of the obstruction. Citing all these cases, the learned senior counsel appeared on behalf of the second respondent submitted that the writ petitioners are frequently filing petitions after petitions before one Court or before the other Court to achieve their ill motives. Thus, the petitioners are in the habit of filing cases before various Courts and attempting to stall the national level project of installing transmission towers from Raigarh, Chattisgarh to Pugalur, State of Tamil Nadu. The conduct of the petitioners in filing several cases for the purpose of causing an obstruction are to be deprecated and such conduct can never be encouraged by the Courts.

40. In respect of the order impugned passed by the District Collector, this Court is of the opinion that the District Collector had given an opportunity to the writ petitioners to submit their objections. However, as discussed in the aforementioned paragraphs, the District Collector is not an authority to modify the Route or to change the place. The Collector is empowered to remove the obstructions, if any, caused for the purpose of implementation of the Scheme of erecting transmission towers. Thus, the Authority of the Collector in this regard is restricted and shall be exercised only with reference to the provisions of the Electricity Act, 2003 and Indian Telegraph Act, 1885. Thus, the Collector has proceeded in accordance with the provisions of the above Acts. Though, the Collector has provided an opportunity, the same has not been

fully utilised by the writ petitioners by providing their statements. Contrarily, the petitioners appeared and refused to record their statements. This being the conduct of the writ petitioners, this Court is unable to accept the contention that the prior permission was needed from the writ petitioners and the opportunity also had not been given to the writ petitioners to put forth their grievances. When opportunity was provided in accordance with the provisions and the powers of the Collector under the Acts are certainly limited, the Collector cannot change the Scheme or modify the route already approved by the appropriate Government. The only course left open for the writ petitioners are to claim damages or just compensation manner by approaching the concerned District Judge by filing appropriate petitions under the provisions of the Act. This being the scope of the litigation before this Court, the writ petitioners have not established any acceptable grounds for the purpose of considering the relief as such sought for in the present Writ Petition."

8.The learned Government Pleader also solicit the attention of this Court with reference to the orders passed by the Division Bench of this Court in W.A.No.180/2018 dated 16.02.2018, wherein the erection of poles and transmission of lines on a private land is approved and therefore, the interim injunction granted is liable to be vacated.

9.The Hon'ble Division Bench also held that the persons aggrieved are entitled for compensation under the provisions of the Indian Telegraph Act, 1885. Section 16 of of the Indian Telegraph Act provides that persons interested are entitled to approach the District Judge concerned for the purpose of ascertaining the quantum of compensation based on the damage or loss caused.

10.This being the principles and the provisions to be followed, this Court is of an opinion that the writ petitioner has to approach the competent District Judge concerned by filing an appropriate application seeking compensation and in the event of filing any such application, the learned District Judge concerned is bound to consider the same, adjudicate the matter and ascertain the quantum of compensation to be paid by the writ petitioner in accordance with law.

11.The learned District Judge also shall decide the just compensation to be paid to the aggrieved persons in this regard and there is no impediment for the authorities to proceed with the projects as per the approved plan.

12.With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

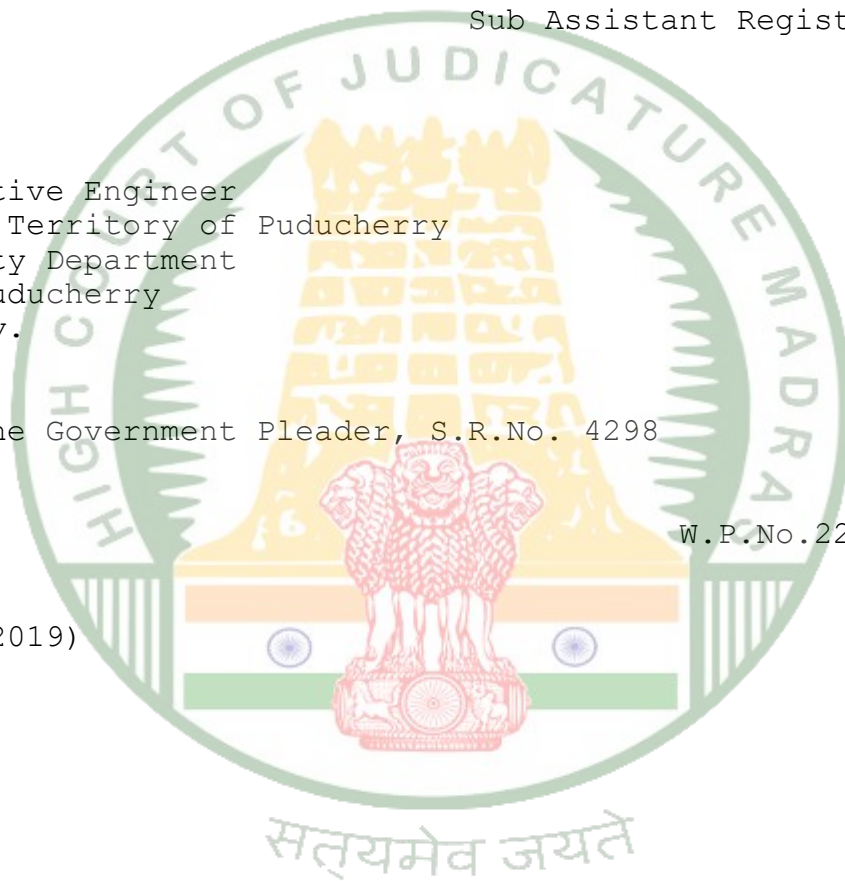
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To
The Executive Engineer
The Union Territory of Puducherry
Electricity Department
Govt.of Puducherry
Puducherry.

+1cc to the Government Pleader, S.R.No. 4298

W.P.No.22128 of 2018

GJ (CO)
GN (19/02/2019)



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