



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.07.2019	Pronounced on: 04.07.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.15746 of 2019
& W.M.P.Nos.15590 & 15594 of 2019

T.Palani

... Petitioner

/versus/

1. The Superintendent Engineer,
General Construction Circle - II,
Tamil Nadu Transmission Corporation Ltd.
Alandur, Chennai.

2. The District Collector,
Vellore District,
Vellore.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to quash the impugned order Letter No.Na.Ka.G2/1176/2019, dated 08.05.2019, passed by the 2nd respondent and remand the same to the second respondent to re-enquire with adopting due process of law.

For Petitioner : Mr.N.R.Elango, Senior Counsel,
for Mr.V.Arun

For R1 : Mr.Abdul Saleem

For R2 : Mr.N.Inbanathan,
Additional Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The averments made in the affidavit are as below:

The petitioner herein is the owner of the land bearing S.F.Nos. 353, 362, 368 and 370 situated at Ladavaram Village,

Arcot Taluk, Vellore District. He has let out a piece of his land to an extent of 5.5 cents to Reliance Jio Infocom Ltd for erecting micro mobile tower. During the first quarter of 2018, contract employees of Tamil Nadu Transmission Corporation Limited has entered into his land in S.No.368 to construct high tension electric tower in the middle of his land. He objected erecting the tower middle of his land. The then Superintendent Engineer, Tamil Nadu Transmission Corporation Limited, agreed to shift the tower location from the middle of his land to the tip of his land. He also assured no cable will be drawn over his land. It will not cause hindrance to his agricultural activity or the micro mobile tower situated at the other end of his land. Taking his assurance, he allowed the respondents employee to erect tower.

3. Now the 2nd respondent/District Collector, Vellore District, is denying supply of electricity to his lease (Reliance Jio Infocom Ltd) quoting the Indian Electricity Rules, that the line corridor width of 765 KV line is to be maintained at 33.5 meters on both sides from the center of 765 KV line. Further, they also say that since the mobile tower is 40 meters height, it has to be 46 meters from the conductor of 765 KV. If his leasee fail to get the power connection for the above said reason, he will loss the contract and also be liable for damages. Hence during the second week of April 2019, when the employees of 1st respondent/Tamil Nadu Transmission Corporation Ltd, tried to enter upon his land, he objected. A notice was served on him by the District Revenue Officer on 24.04.2019 to participate in the negotiation meeting on 26.04.2019 at the office of the 2nd respondent/the District Collector, Vellore District. On the next day, field visit was conducted by 2nd respondent/the District Collector and his team of Officers. It was found that the tower in his land was not erected as per the original plan. Due to the present location of the tower, the electric cable run through the center of his land. Hence, he cannot use his entire land for any purpose either for cultivation or for commercial purpose. His request to change the alignment and shift the tower was rejected by the 2nd respondent by his proceeding dated 08.05.2019, which is impugned in this writ petition.

4. In the counter filed by the 1st respondent, it is stated that, the Government vide G.O.Ms.No.71 Energy (A1) department dated 07.11.2016, have permitted the TANTRANSCO as per Sections 68 and 164 of the Electricity Act, 2003 for executing 4 schemes throughout the State and one of the schemes approved by the Government erection of 765 KV DC line on DC towers with Hexa Zebra conductor from Ariyalur to Thiruvallur PBCIL 765/400 KV SS. Before the scheme was implemented a details study had been conducted along various alternate routes, existing EHT line crossing, road crossing, cost aspect etc., and

finally the most economical and technically feasible route was approved by the Chief Engineer/Transmission/Chennai.

5. While approving the profile, the Chief Engineer/TANTRANSCO, Chennai-2, had laid the following conditions:

1. A minimum ground clearance of 8.84m must be ensured through out the length of the line.

2. A minimum vertical clearance of 5.49m must be ensured between existing LT/HT/P&T lines.

3. A minimum required horizontal clearance of 12.192m for trees on either side throughout the line.

6. Hence, the entire works are being executed only along with the approved route alignment through agricultural, barren and patta lands in order to strictly maintain the above vertical clearance.

7. After completing the erection of tower, while commencing the stringing works the petitioner objected. Hence, the matter was referred to the District Collector, under section 16 of the Indian Telegraph Act, 1885 for removal of obstruction. After hearing the objections, the 2nd respondent/the District Collector passed the order on 08.05.2019. By drawing High Tension Line over his land, the petitioner agricultural activities are not going to be affected. On restriction is imposed on his use of the land. There is no bar to put up mobile tower in the land of the petitioner. He is only advised to keep a safe distance of 46 meters away from the conductor to maintain adequate horizontal electrical clearance. If the present location of the mobile tower is within the prohibited distance, the petitioner can shift the tower to a different location within his land. The lines are drawn keeping in view of the location of residential buildings, wells, pathways. After considering the techno-economical aspects the route has been approved. There cannot be any deviation in the approved route. For the damages, the petitioner will be adequately compensated. The project of public welfare completed by 90% cannot be stalled at the instance of the petitioner.

8. From the reading of the order passed by the 2nd respondent which is under challenge in this writ petition indicates that the 2nd respondent in exercise of his power under section 16 of the Indian Telegraphs Act, 1885 has passed the said order, after affording opportunity to the petitioner. Admittedly, the tower is erected only on the tip of the petitioner land and it was done at the request of the petitioner by relocating from the middle of his land to the tip of his land. Now he is really aggrieved by the letter of the 1st respondent/Tamil Nadu Transmission Corporation Ltd., addressed

to his lease on 13.02.2019 requesting him to shift the mobile micro tower beyond 46 meters from the conductor of 765 KV for safety reasons. Instead of shifting the mobile micro tower, the petitioner wants to shift the electric tower of the 1st respondent/Tamil Nadu Transmission Corporation Ltd., elsewhere. The route has been finalised, after due consideration and taking into account several factors. The erection of tower also completed and drawing cable alone pending. From the facts, it is apparent that it is not feasible to change the alignment at this juncture since almost entire work has been completed. Further the 2nd respondent/the District Collector, has clearly stated in order dated 08.05.2019 about the impossibility of shifting the tower and route as well the importance of the project.

9. The judgment of the Hon'ble Supreme Court in Power Grid Corporation of India Ltd -vs- Century Textiles and Industries Limited reported in 2017 (5) SCC 143, has held that;

Section 10 of the Telegraph Act, 1885, empowers the telegraph authority to 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 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 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 persons interested for any damage sustained by them by reason of the exercise of those powers.

10. Perusal of the order passed by the 2nd respondent/the District Collector, which is impugned in this writ petition, this court finds no material to disagree with the reasoning given. The public interest involved in this project over rides the individual right. The petitioner admits that he has leased out a portion of his land for commercial activities since agricultural was not profitable. Now, he claims that his agricultural activity will be curtailed if the transmission tower and transmission line pass through his land. While erection and drawing line on the rest of the area has completed. Due to his obstructions and objections, the project not completed though schedule to be completed by 15.05.2019. The request for change in tower alignment to accommodate the private cellular company is untenable. The respondent states that the

petitioner interest will be compensated adequately and if he has any further claim, it is open to make his claim before the 2nd respondent, which will be considered in accordance to law.

11. On considering the rival submissions and the law governing the issue, this Court finds no merit in this Writ Petition. Hence, the Writ Petition is dismissed. No costs. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Superintendent Engineer,
General Construction Circle - II,
Tamil Nadu Transmission Corporation Ltd.
Alandur, Chennai.
2. The District Collector,
Vellore District,
Vellore.

+1cc to Mr. Abdul Saleem, Advocate, S.R.No. 57058
+1cc to the Government Pleader, S.R.No. 56520

+1cc to Mr.V.Arun, Advocate, S.R.No. 56601 (17/07/2019)

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& W.M.P.Nos.15590 & 15594 of 2019

MG (CO)
GN(16/07/2019)

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