



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.09.2019	Pronounced on: 03.10.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.24096 of 2019
& W.M.P.Nos.23898, 23899 & 23900 of 2019

1. Sunilkumar Nahata,
S/o.Nemichand Nahata,

2. Deepakumar Nahata,
S/o.Nemichand Nahata,

Both residing at
81/45, Shanmuga Theatre Road,
R.S.Puram, Coimbatore - 641 002. Petitioners

/versus/

1. The District Collector,
Tirupur,
Tirupur District.

2. The Chief Engineer,
Transmission Project - I,
A-10, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600 032.

3. The Executive Engineer,
Transmission Projects,
TANTRANSCO,
Perundurai,
Coimbatore District.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the 1st respondent culminating in the impugned order bearing No.Na.Ka.No.9660/2019/E1, dated 07.08.2019 and quash the same and consequently forbear the respondents 1 to 3 and persons acting under them from laying the 230 KV Transmission Line through the lands of the petitioner in Survey Nos.261 and 262, Peramanallur Village, Ayyampalayam, Tirupur District in violation of Section 67 of the Electricity Act, 2003 read with Section 12(2) of the Electricity Act, 1910

and Works of Licensee Rules 2006 in not obtaining the Petitioner's consent for erection of such lines, and complying with the necessary legal requirements and pass such orders.

For Petitioner : Mr.N.L.Rajah, Senior Counsel
for Mr.E.Jaya Sankar

For R1 : Mr.N.Inbanathan
Additional Government Pleader

For R2 to R3 : Mr.Abdul Sallem, Standing Counsel

O R D E R

Heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents.

2. The Petitioners are owners of the land in S.Nos.261 and 262, Peramanallur Village, Ayyampalayam, Tiruppur District. Aggrieved by the proposal of the Tamil Nadu Transmission Corporation Limited (TAN TRANSCO) to erect transmission tower in their land, the writ petition is filed pointing out various procedural violation and breach of constitutional right.

3. The averment made in the affidavit filed in support of the writ petition is that, on 10.03.2017, the respondents without authority entered into their land, damaged the compound wall and started digging the soil with the help of JCB machine. When the unauthorised Act of the respondent was questioned, they said, they are empowered under the Indian Telegraph Act, 1885 and Electricity Act, 1910 to enter upon any land and erect towers for drawing electrical lines. These two Act though provides for carrying out works pertaining to Telegraph or electrical lines in private land, it shall be done only after consent of the appropriate Government, Local Authority, owner or occupier give consent. Whereas in their case, the respondents never informed or obtained consent before erecting the High tension tower. The public notice published in the daily news paper and Gazette publication calling for objection cannot be considered as proper notice since the location of tower not specified in the public notice. The original plan has been deviated. If the original plan is followed, the petitioner land would be saved. Since, the respondents tried to proceed with their project without affording opportunity to the petitioner and without following the mandates of the law. The petitioner filed writ petition before this Court in W.P.No.16922 of 2017 and prayed for direction forbearing the respondents from laying

the 230KV Transmission Line through the lands of the petitioner.

4. This Court, after hearing the petitioner and the respondents, on 30.01.2019 disposed the writ petition with following direction:

2. The grievances of the Writ Petitioners are that the respondents are attempting to commission to erect High Tension electricity line in the agricultural land belongs to the Writ Petitioner. The objections submitted by the Writ Petitioners before the District Collector is yet to be considered under the provisions of the Works of Licensees Rule, 2006.

3. The District Collector has to conduct an enquiry by considering the objections if any submitted by the land owner and pass orders on merits and in accordance with law. The Learned counsel for the writ petitioners states that the Writ Petitioner has submitted his objections on 30.11.2016.

4. In this view of the matter, the first respondent/District Collector, Coimbatore, is directed to consider the objections/explanations submitted by the Writ Petitioners by conducting an enquiry and by affording an opportunity to the Writ Petitioners and pass orders on merits and in accordance with law within a period of 4 weeks from the date of receipt of a copy of this order.

5. The petitioner, personally informed the Collector of Tiruppur, to comply the above order of the High Court, within the time specified. The 1st respondent/District Collector, summoned the petitioners to participate in the enquiry, on 02.08.2019 along with records. On that day, when the petitioners went for enquiry, they were informed that there will be no change in the route alignment. Without giving any opportunity to present their case, the enquiry was conducted belatedly in violation of time frame given by the Court in W.P.No.24096 of 2019 and the order was passed on 07.08.2019

granting enter upon permission to the respondent and erect transmission tower in the land of the petitioners. The said order is impugned in this writ petition on the prime ground that, the order was passed belatedly beyond the time framed by the Court and without getting extension of time from the Court. The said order was passed without following the Principle of Natural Justice namely without affording fair opportunity.

6. In the counter affidavit filed by the respondents, the power of the TAN TRANSCO to erect transmission lines as Transmission Licensee under the Electricity Act 2003 is asserted. It is stated that the Government of Tamil Nadu by G.O.Ms.No.16, Energy (C.3) Department, dated 23.02.2012 has conferred under Section 164 of the Electricity Act, 2003, power to TAN TRANSCO. By virtue of this power, the TAN TRANSCO is empowered to enter upon any land without notice. Nevertheless, the respondents only after due public notice in dailies circulated in the locality proceeded with the scheme of erecting 230 KV SC LINE on DC Towers from Arasur 400 KV SS (PGCIL) to Ingur 230 KV SS.

7. According to the respondents, based on the check survey report which was approved by the Chief Engineer/Civil Transmission/ TAN TRANSCO, on 23.03.2016, the scheme is implemented and the routes has been finalised, after due contemplation and consultation taking note of existing EHT line crossing, road crossing, cost aspect etc.

8. Earlier, in W.P.No.16922 of 2017, the Petitioners objecting the erection of transmission tower sought Writ of Mandamus, forbearing the respondents from proceeding with the scheme through their land. This Court, in the said writ petition, directed the 1st respondent/District Collector, to consider the objection and pass orders within 4 weeks from the date of receipt of the order. Accordingly, the District Collector, summoned all the parties concern enquired and passed order on 07.08.2019.

9. The respondents claim that, the said project is of great importance for the public and the line comes under Inter State Transmission Infra Structure of evacuation of renewable power in the state of Tamil Nadu under green energy corridor. This project was challenged before this Court by few land owners and same came to be dismissed as devoid of merits. The District Collector, has passed order granting enter upon permission to the respondents taking note of all the factors relevant and

after affording opportunity to the petitioners. The delay in disposing the representation beyond the time specified by the Court was due to the fact on the same day, similar orders were passed in about 15 cases. The District Collector, took up the case of the petitioners immediately, on their request made through the letter dated 23.07.2019.

10. The Learned Senior Counsel for the petitioner submitted that it is well settled in law that once a competent Court fixes an outer time limit to complete the enquiry and pass final orders, the parties to the proceedings are bound to strictly adhere to the time granted to comply with the said order. If the authority could not complete the enquiry within time stipulated, then the Authority has to get permission of the Court for extension of time. If no extension is sought, then order passed beyond the time prescribed should be considered as non est.

11. To buttress his above submission, the Learned Counsel for the petitioners would rely upon the following judgments.

(i). The State of Tamil Nadu and others Vs. T.Ranganathan reported in 2010-2-L.W. 867.

(ii). C.Veerathevar Vs. The State of Tamil Nadu and others reported in 2014 SCC Online Mad 1128.

12. The Learned Counsel for the petitioners would further submitted that the Constitutional Right of the petitioners to hold property cannot be taken away without due process of law. When the objections for the route selected by the respondents, received by the District Collector, he should have considered the objections dispassionately and independently. Instead, he has accepted the route suggested by the 2nd respondent, which is longer route and not economically or technically feasible.

13. Per contra, the Learned Counsel appearing for the respondents would rely upon the Division Bench judgment of this Court rendered in W.A.No.79 of 2019 (R.Raja Vs. The District Collector, Dhamapurai), dated 11.04.2019 and W.A.No.2032 of 2019 (S.Selvaraj Vs. The District Collector, Erode), dated 16.07.2019, which has tested the Constitutional validity of the very same project and upheld the same.

14. Insofar as the present Writ Petition is concerned, the grievance of the petitioner is that, the District Collector,

did not pass the impugned order, within the time prescribed and the impugned order was passed without considering the objections raised by the petitioners.

15. It is not in all cases that time prescribed by the Court, if exceeded will render the decision bad. It all depends upon the facts of each case. In this case, though the Court has passed order on 30.01.2019, the petitioner himself has made written request for dispose his representation only on 23.07.2019, even otherwise, Court cannot be oblivious of the fact that flood of litigations in connection with this projects were pending before this Court and District Collector was suppose to dispose of various representations. When this matter was under his consideration, the batch of Writ Petitions were pending before this Court in connection with very same project. Under such circumstances, some delay has occurred and the 1st respondent/District Collector, was not able to dispose the representation, within the time prescribed. This can, by no stretch of imagination render his decision bad.

16. As far as the reasoning given by the respondents for rejecting the petitioners representation, it would be seen that, a mega project covering various states and Districts, cannot be altered or deviated for objections by some person interested in delaying the project. The route has been decided, after taking note of the various factors and the project is almost completed, except few patches. When the petitioners states that they are other alternate viable routes available, he should have presented those viable alternate routes which may cause less inconveniences to less persons. It is not the self-interest of the petitioners alone, should be taking into consideration, it is the over all interest of the general public and the state has to be taken note.

17. In this case, the District Collector, has fairly considered the representation, the rulings of this Court and the importance of the project. Thereafter, he has arrived at conclusion, which is expressed in the order impugned in this Writ Petition. There is no material to infer that the petitioners was not given adequate opportunity. In such circumstances, there is no illegality or infirmity in the impugned order. Hence, the legality of the impugned order is upheld. Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

bsm

To,

1. The District Collector,
Tirupur, Tirupur District.
2. The Chief Engineer,
Transmission Project - I,
A-10, Thiru Vi Ka Industrial Estate,
Guindy, Chennai - 600 032.
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Transmission Projects,
TANTRANSCO,
Perundurai, Coimbatore District.

+1cc to Mr.E.Jaya Sankar, Advocate SR.No.84609

+1cc to Government Pleader SR.No.85125

Writ Petition No.24096 of 2019

SSD(CO)
GMY(06/11/2019)



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