

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.11.2019

PRONOUNCED ON : 08.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.29832 of 2019 and
W.M.P.No.29729 of 2019

M/s.Brindavan Farms,
Represented by its Managing Partner,
Dr.A.R.Kasilingam,
Old No.56, New No.34,
Vivekanandar Street,
Gandhi Nagar,
Saligramam, Chennai – 600 093.

Petitioner

Vs

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Superintending Engineer,
General Construction Circle – II,
TANTRANSCO,
230 KV CMRL GIS SS,
Alandur,
Chennai – 600 016.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorarified Mandamus to quash the order of the first respondent dated 24.09.2019 and consequently forbear the second respondent from installing high tension wire towers in S.Nos.126, 165/2,

170 and 171/1A1 of Thiruneermalai Village, Tambaram Taluk, Kancheepuram District.

For Petitioner :Mr.Vijayan Subramanian

For 1st Respondent :Mr.N.Inbanathan,
Additional Government Pleader

For 2nd Respondent : Mr.Abdul Saleem,
Standing Counsel

ORDER

The petitioner is the owner of the land measuring about 70 acres in Thiruneermalai Village, Tambaram Taluk. In co-ordination with the TamilNadu Industrial Corporation (TIDCO), he intends to construct and develop an International Health City in that land. While so, during the last week of June, 2018, when he came to know that the second respondent entered into his land and marked certain area of his land to install high tension wire jumbo towers, he gave a representation on 09/07/2018 to the respondents communicating his objection for erecting high tension wire over his land. The second respondent refused to receive his representation. Hence, he filed a writ petition in W.P.18805/2018 before this Court seeking a writ of mandamus forbearing the 2nd respondent from installing high tension wire towers in his land. This Court in the said writ petition, directed the

respondents to consider the petitioner's representation and pass order within a period of 4 weeks. Till the passing of order, *status quo* was ordered.

2.The first respondent conducted enquiry on the petitioner's representation dated 09.07.2018 on 15/10/2018 and 27/11/2018. Pointing out that the petitioner has a proposal to establish an International Health City in the said land and this project will be affected if high tension towers erected disturbing 4 acres of the land. The petitioner requested the first respondent to direct the second respondent to lay underground cable to avoid inconvenience and waste of land. He also offered to bear the additional cost for laying underground cable or in alternative, the route of high tension tower line shall be changed to an alternate route which will cause lesser damage to the petitioner property.

3.During the enquiry the second respondent proposed an alternate route . The petitioner on verification found that the alternate route may not disturb in higher magnitude as before. Therefore, he was contemplating to accept the alternate route suggested by the second respondent. When the first respondent summoned the petitioner to appear for enquiry on 23/09/2019, the petitioner informed the first respondent through a letter dated 21/09/2019 that he is not well and not able to attend the enquiry,

however, he is ready to accept the alternate route proposed by the second respondent. The first respondent, on 24/09/2019 has passed the order granting permission to enter upon the land of the petitioner overruling the objections raised by the petitioner. The said order is impugned in this writ petition.

4. According to the petitioner, the second respondent proposed an alternate route and the same was accepted by the petitioner. While so, there is no reason or logic on the part of the first respondent to accept the original route which will cause greater hardship to the petitioner interest. Further, the High Court in the earlier writ petition, directed the first respondent herein to consider the balance of convenience of both the parties and pass order. While so, when the petitioner ready to bear all the costs for erecting towers in the alternate route so that, the utility of his remaining land will be substantially retained, the order of the first respondent without balancing the convenience of the petitioner had issued enter upon permission to the second respondent. It is further pleaded that the petitioner was not given real and effective opportunity to make his objection. The impugned order is not a speaking order. It is passed without applying mind. The proposal of the petitioner to develop an International health City in the land measuring 70 acres will be defeated if the present route is allowed, since, the second

respondent has already erected high tension towers in his land making nearly 6.19 acres unusable. If the present route is allowed, additionally about 4 acres of land will further become unusable. No construction near the tower and beneath the high tension wire could be erected.

5.The petitioner also stated that the second respondent has drawn the high tension wire through underground from Kundtrathur to Anangaputur. Similarly, if the second respondent lay underground cable in his land, the damage to his land could be mitigated and the petitioner is ready to bear the additional cost for laying underground cable. Hence, pray for quashing the order dated 23/09/2019 passed by the first respondent.

6.In the counter filed by the second respondent, it is stated that, the route of the transmission line as well as the tower positions are finalized purely on the merits of techno-economic consideration. While optimizing the transmission line project, it is highly essential to take care of the permanent features such as roads, power lines, railway lines, communication lines, dwelling units and the crossing stipulations and statutory clearances as per Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010, are to be strictly adhered.

7.The proposed towers to be erected in the land of the petitioner is part of the project emanating from Kadaperi 230 KV SS as a source feeder to Porur 230 KV SS. For executing the project, provision had been made in the already existing Multi Circuit line from existing Kadaperi 230kv SS to Kalivanthapattu 400/230KV SS. Using the said feeder provision, line is being taken from Kadaperi 230KV SS to Thiruneermalai and taken up to Anagaputhur by overhead line folowed by underground cable up to the proposed Porur 230KV SS. Before the scheme was implemented a detailed 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 on 04.10.2016.

8.Regarding the suggestion given by the petitioner to lay underground cable, the second respondent response in the counter is as below:

"The foremost contention of the petitioner is that they do not have any objection for laying underground cables as laid between Kunrathur and Anakaputhur and high tension towers should not be erected since the same may affect the proposed

project. In this regard it is submitted that, in order to ascertain the feasibility of laying underground lines in the petitioner property an inspection was done on 20.09.2018 and it was found out that the laying of underground cables is not feasible since road facility is not available in the property as specific equipment are required to lay the cable underground and further due to the non-availability of roads future maintenance of underground line and other associated and ancillary works cannot be done. Hence, the request of laying underground lines is not technically feasible in the petitioner's property. The report of the inspection on 20.09.2018 was also placed before the 1st respondent herein and the 1st respondent has also considered the same while granting the enter upon permission."

9.Regarding the earlier suggestion proposed by the 2nd respondent to erect the towers on the alternate route, the learned Standing Counsel appearing for the 2nd respondent would submit that, the alternate route was suggested to the petitioner one year ago in the month of October-November 2018 when the project was at nascent stage. The petitioner took time to verify and return. But he did not give his consent for the alternate route. Since, the time limit for completing the project is fixed as November

2019, the 2nd respondent has completed majority of the work in the remaining area. Now, the petitioner expresses his willingness for the alternate route. At this point of time, after erecting towers in the rest of the area, deviation is not possible.

10.The counter affidavit of 2nd respondent extracted above is explanatory. It sufficiently establishes why the enter upon permission granted to the 2nd respondent by the 1st respondent has to be upheld. That apart, the provisions of the Indian Telegraph Act, 1885 beside empowering the District collectors under section 16 of the Act to grant enter upon permission in case of obstruction, also empowers under section 17 of the Act to consider re-alignment of the existing lines in case of necessity.

11.The International Health City project intended by the petitioner is only on paper. Whereas, the project of the 2nd respondent is at the verge of completion. For the reasons extracted above, the 2nd respondent has expressed the difficulty in realigning the route at this stage. However, in view of section 17 of the Indian Telegraph Act , 1885, the petitioner is not left without remedy. At any time in future, he can resort for realignment under section 17 of the act which reads as below:-

"Section 17. Removal or alteration of telegraph line or post, on property other than that of a local authority.—

(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in from, he may require the telegraph authority to remove or alter the line of post accordingly: Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to

conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final."

12.If any such request for re-alignment is made by the petitioner in future, the first respondent is directed to consider the same and pass orders based on the feasibility prevailing at the time of consideration.

13.With the above observation, the writ petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

jbm

Index: Yes/No

Speaking order/non speaking order

08.11.2019

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To

1.The District Collector,
Kancheepuram District,
Kancheepuram.

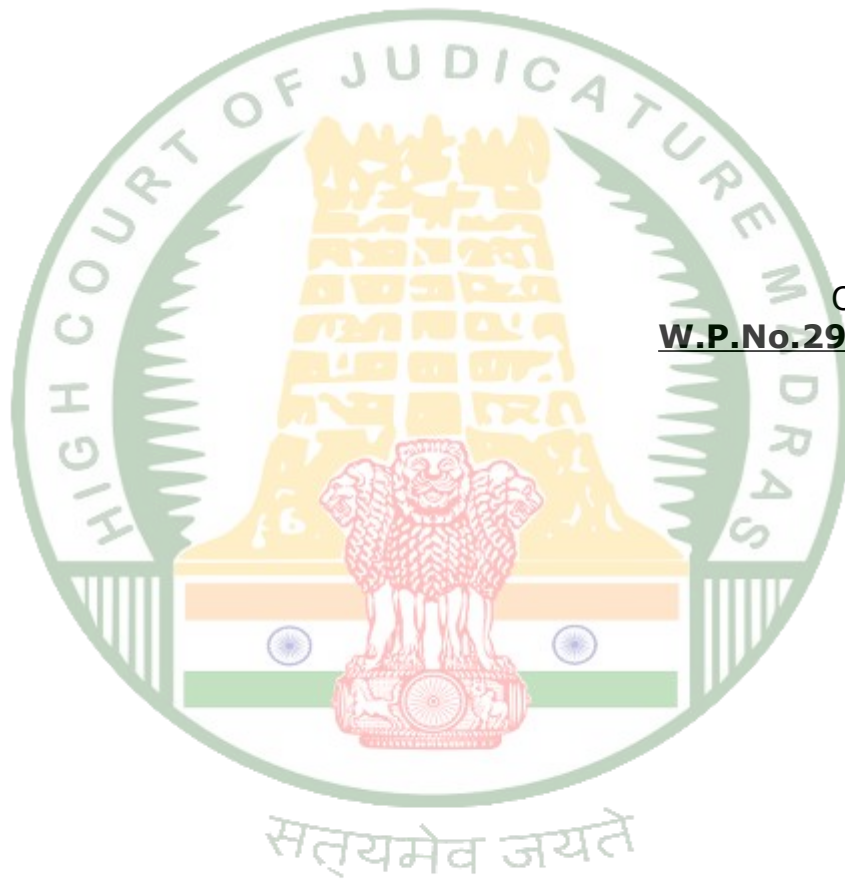
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