

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.3.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.30604 of 2018

M.Madhappan

.. Petitioner

Vs.

1.Assistant Executive Engineer  
TANGEDCO, Mathur Division  
Pothampalli Thaluk  
Krishnagiri District

2.Executive Engineer  
TANGEDCO, Mathur  
Pothampalli  
Krishnagiri District

3.Superintendent Engineer  
TANGEDCO, Mathur

4.The Secretary  
Electricity & Energy Department  
Government of Tamil Nadu  
Chennai  
(R4 suo motu impleaded vide  
order dated 26.2.2019 made in  
W.P. No.30604/2018)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing respondents to consider the representation dated 20.10.2018 of petitioner as per law by framing the specific time frame.

For Petitioner : Mr.S.A.Raghu Raman

For Respondents : Mr.M.Varunkumar,  
Standing Counsel for TNEB/R3  
Mr.E.Manoharan, AGP for R4

ORDER  
(Delivered by SUBRAMONIUM PRASAD, J.)

A resident of Chinnampatti village, has filed this instant writ petition contending that TNEB (TANGEDCO) laid EB lines in a narrow path way of about 8 feet in width running to a length of 3 Kilometer in Chinnampatti Village joining Mindidiri Village and Santhampatti due to which the width of road was further reduced, which causes traffic congestion. According to the petitioner, these electric poles, which have been laid are, in violation of Section 10 of the Indian Telegraph Act, 1885. The petitioner also states that he has given representation to the respondents against the erection of electricity lines. Since his representation has not been considered by the Electricity Board, the instant writ petition is filed.

2. On notice, the respondents have entered appearance and filed counter affidavit.

3. Heard the learned counsel for the parties and perused the materials available on record.

4. Sections 10, 12 and 13 of the Indian Telegraph Act, 1885, read as under:

"10. Power for telegraph authority to place and maintain telegraph lines and posts.—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—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, 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 by reason of the exercise of those powers.

12. Power for local authority to give permission under section 10, clause (c), subject to conditions.—Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

13. Power for local authority to require removal or alteration of telegraph line or post.—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 vested in or under the control or management of a local authority, and the local authority, 44 having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be "

5. A perusal of Section 10 of the Indian Telegraph Act, 1885, shows that the Act apply only when telegraph is established or maintained. Telegraph Authority shall not exercise the powers in respect of any property vested or under the control or management of any local authority, without the permission of that authority. Local Authority defined in Section 3(7) of the Indian Telegraph Act, 1885, reads as under:

(7) 'local authority' means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by' the Central or any State Government with, the control, management of any municipal or local fund.

6. Paragraph 6 of the counter affidavit reads as under:

"6. I respectfully submit that when the officials under the control of the Assistant Engineer (O&M), Mathur were about to erect poles on

the mud road i.e., one feet away from that road in the bund of the adjacent agricultural land, on the same line where the electric pole is already existing, the petitioner herein along with some people have objected and prevented the TANGEDCO people to erect poles. In the existing pole, an agricultural service connection was also provided to an agriculturist. The respondents herein have no other option except to stop the above work for the time being."

7. A perusal of paragraph 6 of the counter affidavit shows that the poles are to be erected on the bund of adjacent agricultural land.

8. Though the respondents have relied on Section 68 of the Electricity Act, 2003, the same is not applicable to the facts of the present case. Section 68 of the Electricity Act, 2003 reads as under:

68. Overhead lines.-

1. An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

2. The provisions contained in sub-section (1) shall not apply--

a. in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

b. in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

c. in such other cases, as may be prescribed.

3. The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

4. The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

5. Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

6. When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Section 68 of the Electricity Act, 2003, talks about permission from the appropriate Government, which is the Central Government and Central Government Authorities, the said provision is not applicable.

9. The present case, is, therefore covered under Section 10 of the Telegraph Act. A perusal of the records of the case does not show that the land on which the telegraph poles erected have been vested or under the control or management of a local authority whose permission is required. In the absence of any material to establish that the poles have been erected on the land vested with the local authority, the writ jurisdiction under Article 226 of the Constitution of India, cannot be invoked.

The writ petition is, therefore, dismissed. However, there shall be no order as to cost.

Sd/-  
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

Asr

To

1. Assistant Executive Engineer  
TANGEDCO, Mathur Division  
Pothampalli Thaluk  
Krishnagiri District

2. Executive Engineer  
TANGEDCO, Mathur  
Pothampalli  
Krishnagiri District

3. Superintendent Engineer  
TANGEDCO, Mathur

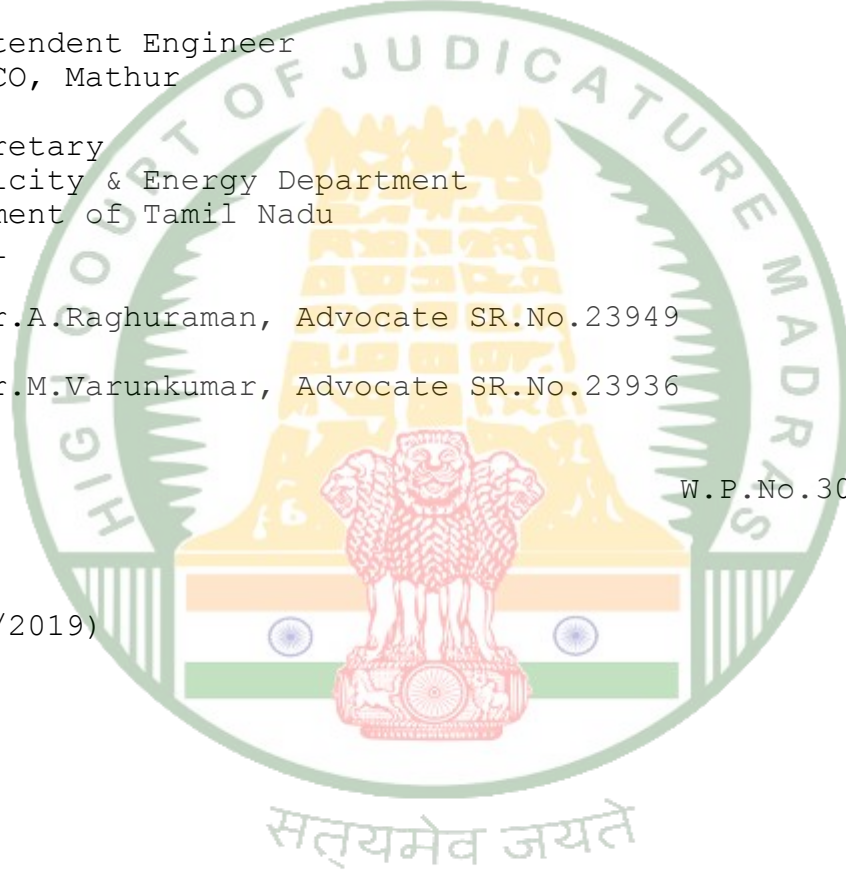
4. The Secretary  
Electricity & Energy Department  
Government of Tamil Nadu  
Chennai

+2cc to Mr. A. Raghuraman, Advocate SR.No.23949

+1cc to Mr. M. Varunkumar, Advocate SR.No.23936

W.P.No.30604 of 2018

SJ(CO)  
GMY(30/04/2019)



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