



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2019

CORAM:

**THE HONOURABLE DR.VINEET KOTHARI,
ACTING CHIEF JUSTICE**

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A.[MD]No.254 of 2019

and

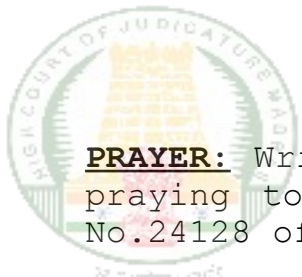
C.M.P.[MD]No.2028 of 2019

Parvathi : Appellant

Vs.

- 1.The District Collector,
Tuticorin District,
Tuticorin.
- 2.The Superintending Engineer,
Central Circle,
Tamil Nadu Electricity Board,
K.Pudur,
Madurai.
- 3.The Revenue Divisional Officer,
Kovilpatti,
Tuticorin District.
- 4.The Tahsildar,
Kayathar Taluk Office,
Kayathar,
Tuticorin District.
- 5.The Superintendent of Police,
Tuticorin District,
Tuticorin.
- 6.The Inspector of Police,
Kayathar Police Station,
Kayathar,
Tuticorin District.

: Respondents



PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed by this Court in W.P.[MD] No.24128 of 2018 dated 11.01.2019 and thereby allow this appeal.

Prayer in WP(MD). 24128/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus, call for the record pertaining the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.D2/18476/2018 dated 27.11.2018 and quash the same as illegal and arbitrary and consequently direct the respondents to install the Electric Tower in Survey No.648/3C and do not interfere with the petitioners land in Survey NO.648/3B2 situated Kayathar Village, Kayathar Taluk, Tuticorin District.

For Appellant : Mr.Veerakathiravan,
Senior Counsel
for Mr.G.Gomathi Sankar

For Respondents 1,3 to 6 : Mr.A.K.Baskara Pandian
Special Government Pleader

For Respondent No.2 : Mr.S.M.S.Johnny Basha

JUDGMENT

**[Judgment of the Court was delivered by
The Hon'ble Acting Chief Justice]**

The petitioner has filed this Writ Appeal against the order dated 11.01.2019 passed by the learned Single Judge, whereby the learned Single Judge was pleased to dismiss the writ petition filed by the petitioner with the following observations:-

"10.It is also seen that it may not be practically possible to change the alignment of the towers that is to be erected and that too, out of 76 towers, only two towers which is to be erected in the petitioner's land objecting the entire project, as the public interest is important and the entire project would benefit the general public at large and as such the petitioner's contention cannot be sustained. It is also seen that in exercise of the power under Section 10 of the Electricity Act conferred under Section 51 of the Electricity Act, same having been saved by Section 185(2)(a) of the Act, 2003, the Board has power to locate the tower in the land owned by any person. Further, the Division Bench of this Court has



held that the consent of the land owner need not be obtained before erecting poles, since there is no acquisition of the land, but the respondents are bound to minimize the damages as much as possible to the said lands.

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11.The only remedy left open to the owner of the land is, if any line is stretched or if any tower is constructed the petitioner has to seek for damages under Section 16(3) of the Telegraph Act, 1885 before the first respondent herein. The individual interest is subordinate to the interest of the general public and on this point, the petitioner's contention cannot be accepted and as such, this Court finds no merit in the writ petition filed by the petitioner. Under these circumstances, this Writ Petition is dismissed. No costs. Interim order granted on 06.12.2018 stands vacated. Consequently, connected miscellaneous petitions are dismissed."

2.The learned Senior counsel for the appellant / petitioner fairly submitted that since the two poles to be constructed in the land belonging to the petitioner had already been constructed for, want of any injunction order against that, the only remedy available to the petitioner is to claim compensation for such construction by the respondent in the land belonging to the petitioner.

3.The learned Government Advocate does not fairly object to the said remedy being availed by the petitioner and to claim compensation in accordance with law.

4.Therefore, we are not inclined to interfere with the order of the learned Single Judge in any manner. We direct the respondents to determine the claim to be paid to the petitioner in accordance with law as expeditiously as possible, preferably, within a period of three [3] months from today.

5.Accordingly, the Writ Appeal stands disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

- 1.The District Collector,
Tuticorin District,
Tuticorin.
- 2.The Superintending Engineer,
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- 5.The Superintendent of Police,
Tuticorin District,
Tuticorin.
- 6.The Inspector of Police,
Kayathar Police Station,
Kayathar,
Tuticorin District.

+1 CC to M/s.G.GOMATHI SANKAR, Advocate (SR-96819[F] 07/11/2019)
+1 CC to M/s.Special Government Pleader (SR-96974[F] 08/11/2019)

JUDGMENT MADE IN
W.A.[MD]No.254 of 2019
Dated: 07.11.2019

MR/MPK

SDS (13.12.2019) 4P 9C