



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.16084 of 2019
and W.M.P.(MD)No.12784 of 2019

P.Ulaganathan

...Petitioner

-Vs-

1.Union of India Represented by the Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Parayavaran Bhavan,
Jorbagh Road, New Delhi - 110 003.

2.The State of Tamilnadu represented
by its Principal Secretary to Government,
Department of Energy, Government of Tamilnadu,
Fort. George, Chennai - 600 009.

3.The Chairman,
Tamilnadu Transmission Corporation Limited,
No.144, Anna Salai, Tamilnadu Electricity Board,
Chennai - 600 002.

4.The District Collector cum District Magistrate,
Karur District, Collectorate, Karur.

5.The Deputy General Manager,
Power Grid Corporation of India Ltd.,
Coimbatore to Trichy Main Road,
K.Paramathy Post, Karur District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, forbearing the respondents from in any manner erecting or installing, High Tension Electricity Line above and adjacent to the petitioner's lands in S.No.525, 550/A3, B, C1, C2, C3 and 533/1, 534, 535 in Kuppam Village, Pugalur Circle, Aravakuruchi Taluk, Karur District.

For Petitioner : Mr.M.Saravanakumar
For Respondents : Mr.Dr.M.D.Poornachari for RR1
Mrs.J.Padmavathy Devi for R2 & R4
Special Government Pleader
Mr.SMS.Johny Basha for R3
Mr.Jayesh B.Dolia
for M/s.Aiyar & Dolia for R5

**ORDER**

The prayer in this writ petition is for a Mandamus forbearing the second respondent/Power Grid Corporation of India Limited from erecting High Tension Electric Tower in S.F.Nos.525, 550/A3, B, C1, C2, C3 and 533/1, 534, 535 in Kuppam Village, Pugalur Circle, Aravakuruchi Taluk, Karur District, without obtaining a prior permission from the 1st respondent/District Collector.

2.The petitioner appears to have addressed a representation in this regard to the District Collector on 09.07.2019 and has rushed to Court with the present writ petition without affording adequate opportunity to the District Collector to receive, process and conduct enquiry upon his representation.

3.The petitioner has raised various objections in the writ petition itself with regard to the certainty of the High Tension Electric Power in the middle of his property. According to him, the erection of the proposed electric tower would compromise the property in several ways and his objections in regard to the project ought to have been taken into account.

4.The authority under which the Power Grid Corporation seeks to set up the High Tension Tower is not in question. It was considered in almost identical circumstances as before me, as recently as on 11.04.2019, in Writ Appeal No.79 of 2019 by the Division Bench sitting at the Principal seat, referring to several judgments of the Apex Court.

5.The Bench has extracted from the finding in *Power Grid Corporation (India) Limited Vs. Century Textiles and Industries Limited and others ((2017) 5 SCC 143)* as follows:

"23.Section 10 of the Indian Telegraph Act, 1885 empowers the Telegraph Authority 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 Indian Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to laydown telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Indian 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 person interested for any damage sustained by them by reason of the exercise of those powers."

<https://hcservices.ecourts.gov.in/hcservices/> 6.The Division Bench also refers to an earlier decision in the case of *Sri Vignesh Yarns Pvt. Ltd., Vs. S.Subramaniam and others ((2013) 1 MLJ 56)* relating to the provisions of Section 16 and



Section 10 of the Telegraph Act, as follows:

"22.Scope of Section 10 and 16 of the Indian Telegraph Act, 1885: The power under Section 10 of the Indian Telegraph Act, 1885 is rather wide and extensive. While exercising the power, it is not necessary for the Respondent No.1 to put the individuals, who owned the land on notice. Admittedly, the Respondent No.1 has got power under Sections 10 and 16 of the Indian Telegraph Act, 1885. Such a power has been conferred upon the Resolution No.1 in public interest. The exercise of the said power by erecting the towners with overhead lines would not amount to an acquisition. It is true that such an action would diminish the value of the property of an individual, but at the same time it cannot be termed as an acquisition. Since Section 16 of the Indian Telegraph Act, 1885 provides mechanism of compensation, the Appellants can have no grievance.

23.Section 16 of the Indian Telegraph Act provides for a mechanism by which the Respondent No.1 can approach the second respondent, if there is an obstruction or resistance. It is not necessary that in each and every case the Respondent No.1 will have to approach the second respondent whenever there is an objection. The word objection has got a different connotation than the words resistance or obstruction. A resistance or obstruction would mean preventing the statutory body from carrying out the public duty. Whereas an objection is merely a form of protest. Further, under Section 16 of the Indian Telegraph Act, the Respondent No.2 has got no power to go into the merits of the case and find out as to whether the alignment proposed is correct or not and there is any possibility of realignment. The prescription of Section 16 of the Indian Telegraph Act is very specific to provide aid to the Respondent No.1 to perform its statutory duty. Considering the scope of Section 10 of the Indian Telegraph Act vis-a-vis Section 16 of the Indian Telegraph Act, it has been held by the Division Bench of the Delhi High Court in Scindia Potteries V. Purolator India Ltd., MANU/DE/0189/1980 : AIR 1980 Delhi 157 as follows: 9 ... The exercise of power under Section 10 is not conditional on compliance with the provisions of Section 16(1) of the Act. The power given under Section 10 is absolute. It is only when there is a resistance or obstruction in the exercise of that power that the occasion to approach the District Magistrate arises. If there is no resistance or obstruction, there is no occasion for the telegraph authority to approach the District Magistrate. The



alleged oral protest relied upon by the Appellant appears to us to be a made up story. Two telegraph poles were affixed on the Appellants' property in February, 1974. The telephone lines and connections were thereafter given from time to time. Till the landlord-tenant dispute arose between the Appellant and M/s. Purolator India Ltd., no objection was raised by the Appellant. No doubt in April, 1978 the Appellant gave notice to the telegraph authority under Sections 17 and 19A have a different purport. The resistance and obstruction envisaged by Section 16(1) of the Act is different. This will be clear on a reading of Sub-Section (1) of Section 16 of the Act. It is for the purpose of Section 188 I.P.C. that an application is to be given under Section 16(1) of the Act to the District Magistrate. Section 188, I.P.C. makes the disobedience of an order duly promulgated by the public servant an offence. Section 16 is really in aid of the discharge of statutory duty and exercise of statutory power postulated by Section 10. We are in respectful agreement with the ratio laid down therein."

7. Thus in the light of Section 10 of the Indian Telegraph Act, 1885, and the authorization given to the Power Grid Corporation by the Government of India in exercise of powers under Section 164 of the Electricity Act, 2003 vide order dated 24.12.2003, the authority of the second respondent to place and maintain telegraph lines and posts cannot be questioned. At best, the second respondent may be diverted to consider the objections put forth by the land owners in regard to the compensation sought by a land owner for any damage that may be caused by the proposed laying of High Tension wires.

8. The District Collector before whom the representation of the petitioner is pending shall consider the same and after hearing both the respondents as well as the Land owner, shall pass suitable order on merits only on the aspect of compensation to the landowner, if any payable, for damage or inconvenience caused to the property or the residents therein by virtue of the action of the respondent in laying the High Tension Electric Tower. Such order shall be passed within a period of four weeks from date of receipt of a copy of this order. The learned counsel for the fifth respondent agrees that the proposal, insofar as it relates to the property in question, shall be kept in abeyance till such time orders are passed in this matter by the fourth respondent as above.



9.This writ petition is disposed of in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

To

1. The Secretary,
Ministry of Environment, Forest & Climate Change,
Indira Parayavaran Bhavan,
Jorbagh Road, New Delhi - 110 003.
- 2.The Principal Secretary to Government,
Department of Energy, Government of Tamilnadu,
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- 3.The Chairman,
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- 4.The District Collector cum District Magistrate,
Karur District,
Collectorate, Karur.
- 5.The Deputy General Manager,
Power Grid Corporation of India Ltd.,
Coimbatore to Trichy Main Road,
K.Paramathy Post, Karur District.

- +1 CC to Mr.M.SARAVANAN KUMAR, Advocate SR-76735.
- +1 CC to SPL GP SR-77048.
- +1 CC to M/s.AIYAR & DOLIA, Advocate SR-77032.
- +1 CC to Mr.M.D.POORNACHARI, Advocate SR-77151.

W.P. (MD) No.16084 of 2019
22.07.2019

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