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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.08.2019**

CORAM:

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. (MD) No. 17167 of 2019

and

W.M.P. (MD) No. 13687 of 2019

M. Duraisamy

... Petitioner

/Vs./

1. The District Collector,
Office of the District Collector,]
Karur District, Karur.

2. The Chief Manager, Power Grid Corporation of India,
Coimbatore - Trichy Main Road,
K. Paramathy & (Post), Karur District.

... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the Impugned Orders in Na.Ka.Aa3/19706/2018-19 (VII), dated 28.06.2019 passed by the 1st respondent and quash the same.

For Petitioner	: Mr.C.Ezhilarasu
For R-1	: Mr.R.Murugan Additional Government Pleader
For R-2	: Mr.S.Suresh for Aiyar F.Dolia

ORDER

The petitioner states that he is the owner of agricultural land in S.F.No.305, Thennilai South Village, Pugalur Taluk, Karur District, (in short 'property in question'). He has filed the present writ petition seeking a Certiorari quashing order dated 28.06.2019 passed by the District Collector (R-1). The petitioner claims to have been greatly prejudiced by a move to erect a high tension power line upon the property in question. Various grounds have been raised by him stating that the location of the high tension power line causes fragmentation of his property, restricts cultivation, results in loss of land value, renders borewell and other sources of water unusable and also causes problems within the family for partition of the property, to challenged the impugned action.

2. The second respondent, the Power Grid Corporation of India, (in short 'PGCI/R2') has sought and has been granted approval from the Power System Planning & Project Appraisal-II Division (Planning Committee constituted in regard to Power System Planning of Southern and Western Regions), Central Electricity Authority,



Ministry of Power, Government of India, dated 24.09.2015 to implement a project involving three schemes of power sharing between Raigarh and Trichur.

3. Scheme 1 deals with a 6000MW HVDC system from Raigarh to Pugalur, Scheme 2 with an AC system strengthening at Pugalur and setting up of a line running from the (Existing) Pugalur Station (400 KV) to Pugalur HVDC station and Scheme 3 deals with the setting up of a 2000 MW VSC based HVDC system between Pugalur and Trichur (in all and contiguously referred to as 'Project'). It is pursuant to approval granted for the aforesaid project that all infrastructure including electricity lines are being put in place by the second respondent.

4. Since the designated route for the project runs through the property in question, the petitioner had submitted his objections to the first respondent contending that the impugned action constitutes an act of trespass upon his land. The petitioner also alleged that the provisions of the Works of Licensees Rules, 2006 (in short 'Rules') and the relevant provisions of the Electricity Act, 2003 (in short 'Act') had not been complied with and his prior consent had not been obtained as required in terms of Rule 3 (1)(a) of the Rules. Since the petitioner is stated to have prevented the second respondent from proceeding with the project, a representation had been made by PGCI/R2 before the first respondent seeking entry into the land in question invoking the provisions of Section 16 of the Indian Telegraph Act, 1885. Thereafter, the first respondent has heard the petitioner in regard to his objections to the proposed action of the second respondent, culminating in the impugned order rejecting the objections raised and permitting PGCI/R2 to enter upon the land in question for purpose of the project.

5. The *lis* before me is no longer *res integra* insofar as several judgments of the Supreme Court and orders of Division Benches of this Court have considered and decided identical challenges.

6. A Division Bench of this Court in the case of *R.Raja and others vs. the District Collector, Dharmapurai and others* in W.A.No.79 of 2019 dated 11.04.2019 had considered an identical case as the one before me wherein also the Power Grid Corporation of India was the contesting respondent. The project in question before me is the same project as considered by the Division Bench. After considering an earlier decision of this Court in *R.Kannan vs. Power Grid Corporation (India) Limited and others* (W.A.No.464 of 2008 dated 10.04.2008), the Division Bench (in W.A.No.79 of 2019), states thus:

'...

2. We do not wish to reproduce various judgments on the interpretation of the provisions governing.



They have been dealt with in extenso by this Court and the Apex Court in numerous cases. Suffice it to refer to the recent judgment of the Apex Court in Power Grid Corporation (India) Limited Vs. Century Textiles and Industries Limited and Others ((2017) 5 SCC 143), wherein it has been held as under:

'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.'

Thus, Section 10 of the Act confers powers to the second respondent to place and maintain telegraphic lines and posts. We have no difficulty in holding that there is an adequate authorisation given to the second respondent by the Government of India in exercise of power under Section 164 of The Electricity Act, 2003 by the order dated 24.12.2003.

10. On the scope of Section 16 of the Act vis-a-vis Section 10, the Division Bench of this Court in (ii) C.Ram Prakash and Another Vs. Power Grid Corporation (India) Limited and Others (2011-4 L.W. 924) in which one of us (MMSJ) is a party and author has held as follows:

'22. Scope of Sections 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



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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 Respondent No. 1 in public interest. The exercise of the said power by erecting the towers 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



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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 of the Act and may be that the telephone connections in May, 1978 can be treated as the ones objected to but then 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.'

11. Thus, in view of the same, nothing more is to be stated. In fact, we have also called the officer concerned and perused the records. We also permitted the learned counsel for the appellants to do so. The officer has also explained the procedure which we have recorded supra. We do not find any



malice in law or fact. The second respondent is carrying out its statutory duty. Now the entire project is over insofar as the appellants are concerned. We may note that two of the writ petitioners also joined the other in filing the writ petitions after receiving compensation, which cannot be appreciated. Similarly, one of the appellants has also received the compensation amount. It is the appellants who approached the first respondent and for the reasons known, they did not appear for hearing. They have asked for numerous documents, which is for the purpose of dragging on the proceedings. Order under Section 16(1) of the Act was passed not only on the request of the appellants but also that of the second respondent. The role available to first respondent is rather limited. It is neither a supervisory nor an adjudicating authority over the second respondent. When the element of expertise is involved and the same is undertaken by the statutory body as per law, the power of judicial review will have to be entertained with extreme caution. We cannot interfere with the matter on some apprehension expressed by the appellants. Now the substantial part of the project is over insofar as the appellants are concerned. We are not dealing with an acquisition per se. There is no material available to controvert the reasoning in the impugned orders. Admittedly, there is overwhelming public interest exists in favour of the second respondent. Every delay would cause serious financial implications among others. It might have a spiralling effect on the project as well. The appellants cannot ask the first respondent to direct the second respondent to furnish all the documents which they seek. There is no arbitrariness in the procedure adopted by the second respondent. Certainly, the appellants can seek for appropriate compensation for the diminishing value of their lands caused by the overhead lines and erection of towers. Thus, we do not find any merits in this appeal.'

The above order has been confirmed by the Supreme Court the case of *R.Raja and others vs. District Collector and others* in SLP No.11596 of 2019 (Order dated 22.07.2019).

7. Both learned counsel draw attention to a decision of a Division Bench of this Court in the case of *Palanisamy vs. Union of India, Ministry of Environment, Forest & Climate Change, New Delhi,*



and others in W.P.(MD)No.9772 of 2019 dated 24.04.2019, wherein this Court has directed the respondents to refrain themselves from proceeding with the said project except if more than 50% of the cost of the project has been expended.

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8. In the present case, on facts, the counter filed by the second respondent confirms, at paragraph No.20, that the cost expended towards the project is 70.60% as against the total approved cost of Rs.21,734.86 crores (as on 13.08.2019). Thus, the embargo placed by the Division Bench in the aforesaid matter does not stand in the way of the second respondent from continuing with the project as far as the present case is concerned.

9. I may also make useful reference to the most recent order passed in identical circumstances, dated 29.07.2019, by a Division Bench sitting at the Principal seat in the case of *Vai.Palanisamy and others vs. Union of India, the Secretary, Ministry of New and Renewable Energy, New Delhi and others*, (W.A.No.2167 of 2019), wherein the Division Bench, after referring to the earlier order in W.A.No.79 of 2019, dated 11.04.2019 and the confirmation of the same by the Supreme Court, dismissed the Writ Appeal holding that the position of law noticed therein is fairly well settled and not liable to be disturbed.

10. The only other attempt made by the petitioner before me is to say that the reference to '50%' by the Division Bench in order in W.P.(MD)No.9772 of 2019 dated 24.04.2019 is not satisfied in the present case insofar as the break-up of cost set out in the counter refers to over-all project cost and not the cost with reference to the specific project affecting the petitioners' land. This submission is misconceived and the petitioner appears to be proceeding on a misconception that the three schemes approved by the Ministry of Power constitute three separate projects. This is not so.

11. The project, as approved on 24.09.2015 constitutes a single, comprehensive project and bifurcation into three schemes is only for logistical purposes. The graphic/visual representation of the entire project as circulated by learned counsel for the Power Grid Corporation also makes this position amply clear. Thus, the submission of the petitioner to the effect that the reference to '50%' in W.P.(MD)No.9772 of 2019 order dated 24.04.2019 should be construed qua scheme is rejected. The project is an integrated one, running from Raigarh to Trichur over a distance of 1843 kms and in the light of the position that close to 70% of the project cost has been expended as on date, I see no justification for granting the prayer sought.

<https://hcservices.ecourts.gov.in/HCServices/WritPetition> 12. The Writ Petition is dismissed however granting liberty to the petitioner to seek appropriate compensation for any consequences that may be caused by the erection of the transmission



powers and overhead lines, in his property in accordance with law.
No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The District Collector,
Office of the District Collector, Karur District, Karur.

+1 CC to SPL GP (SR-83967[F] dated 28/08/2019)
+2 CC to Mr.D.ANANDAN, Advocate (SR-83921[F] dated 28/08/2019)
+1 CC to M/s.AIYAR & DOLIA, Advocate (SR-84146[F] dated
29/08/2019)

Common Order made in
W.P.(MD)No.17167 of 2019
Dated:27.08.2019

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MK (09.09.2019) 8P 6C