



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) No.23342 of 2016

and

W.M.P. (MD) Nos.16775 and 16776 of 2016

WEB COPY

The Superintending Engineer,
TNEB, General Construction Circle,
K.Pudur, Madurai.

... Petitioner

Vs

1.The Collector,
Theni District,
Theni.

2.Sivakumar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Na.Ka.No.29041/2014/C2 dated 04.11.2016 passed by the 1st respondent and quash the same and consequently direct the petitioner to erect the tower along with the approved alignment.

For Petitioner : Mr.S.Srimathy

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader for R1
: Mr.R.Suriyanarayanan for R2

ORDER

The writ petitioner is a State Transmission Utility under the Electricity Act, 2003. It was entrusted with the work of erection of 110/11KV Double Circuit Line on Double Circuit Tower for conversion of take off arrangement in 110 KV Theni - Madurai feeder - II into LILO arrangement at Andipatti 110/22 KV Sub Station. While implementing the project, the petitioner had to erect towers as well as draw lines over the land of the second respondent herein. When the petitioner was about to carry out the said work, the second respondent offered his resistance. The second respondent filed W.P.(MD)No.13162 of 2014. In the said writ petition, the proceedings of the writ petitioner herein came under challenge. The said writ petition was disposed of on 11.08.2014 in the following terms:-

"Accordingly, the writ petition is disposed of granting liberty to the petitioner to file an application before the District Collector, Theni District (District Magistrate) under Section 17(2) of



the Telegraph Act, 1885 and raise all objections as regards the proposal to erect high tension electric tower in his property. Such application shall be filed within a period of two weeks from the date of receipt of a copy of this order. On such application being made, the District Magistrate (District Collector) shall issue notice to the petitioner as well as to the respondent board and take a decision on the petitioner's objection within a period of two weeks thereafter. The petitioner shall co-operate in the conduct of the enquiry. Till then, the tower in question shall not be erected. Since the District Collector, Theni is not a party to the writ petition, Registry is directed to mark a copy of this order to him. Consequently, connected Miscellaneous Petitions are closed. No costs."

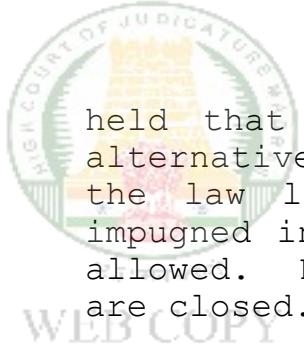
2. Pursuant to the said direction, the District Collector, Theni District took up the petitioner's application for enquiry. In the meanwhile, the writ petitioner also moved the District Collector, Theni seeking entry upon the premises. After hearing both the sides, the first respondent herein namely., The District Collector, Theni passed the impugned order dated 04.11.2016, directing the writ petitioner herein to realign the route, so that the second respondent herein is not affected in any way. In other words, the second respondent's land was to be spared. The order passed by the first respondent is assailed in this writ petition at the instance of the transmission licensee.

3. The learned counsel appearing for the writ petitioner contended that the impugned order lacks jurisdiction. In this regard, the learned standing counsel drew the attention of this Court to the decision of the Honourable Division Bench reported in **2013 (1) MLJ 56, (Sri Vignesh Yarns Pvt. Ltd., Vs. S. Subramaniam)** in paragraph 17, the Honourable Division Bench held that the District Collector is not vested with any power under Sections 16 and 17 of the Indian Telegraph Act to direct the Transmission licensee to erect towers or draw lines through arouse different from the one which the licensee had originally proposed.

4. The learned counsel appearing for the second respondent would however strongly contend that Section 17(3) of the Indian Telegraph vests such a power in the District Magistrate/District Collector to pass the impugned order.

5. I carefully considered the rival contentions.

6. Though the submission of the learned counsel for the petitioner is quite appealing to me, I have to hold that the legal issue projected in this writ petition has already been decided by the Honourable Division Bench in the aforesaid decision reported in 2013 (1) MLJ 56. The Honourable Division Bench has categorically



held that it is not for the District Collector to suggest any alternative route. In view of this matter, respectfully following the law laid down by the Honourable Division Bench, the order impugned in this writ petition is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

Sub Assistant Registrar(CS I)

To:

The Collector,
Theni District, Theni.

1 CC to M/s.R.SURIYANARAYANAN, Advocate (SR-59151[F] dated 05/04/2019)

+1 CC to M/s.S.M.S.JOHNNY BASHA, Advocate (SR-59168[F] dated 05/04/2019)

+1 CC to M/s.SPL GP (SR-59307[F] dated 05/04/2019)

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