



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.07.2019**

CORAM

WEB COPY

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P. (MD)Nos.21266 of 2018, 14390 & 14497 of 2019
and W.M.P.(MD)Nos.19098 of 2018, 10831 & 10936 of 2019

W.P. (MD) .No.21266 of 2018

K.Maruthupandian

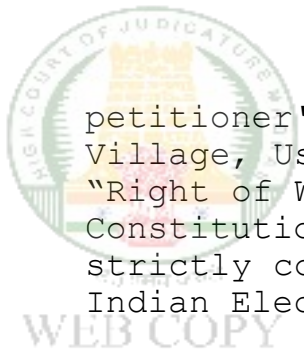
...Petitioner

-Vs-

- 1.The District Collector,
District Collectorate,
Madurai, Madurai District.
- 2.Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Rep. by its Director (Transmission Projects),
Koyambedu, Chennai - 600 107.
- 3.The Chief Engineer,
Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Transmission Wing,
Koyambedu, Chennai - 600 107.
- 4.The Superintending Engineer,
Tamilnadu Transmission Corporation Limited.
General Construction Circle,
Transmission Wing,
T.N.E.B. Madurai Region,
K.Pudur, Madurai - 625 007.
- 5.The Executive Engineer,
(TANGEDCO), Transmission,
T.N.E.B., Madurai Region,
K.Pudur, Madurai - 625 007.
- 6.The Assistant Engineer,
Vickramangalam,
SS Complex, Mullipalaiyam Street,
Usilampatty Post,
Vickiramangalam - 625 207.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to forbear the 4th respondent from taking steps to erect the High Tension Town and lines over the



petitioner's land in Survey Number S.No.26/4A3C at Vikiramangalam Village, Usilampatti Circle, Madurai District, without acquiring the "Right of Way" of the Petitioner's Right under Article: 300 A of the Constitution of India and consequently direct the respondents to strictly comply the procedure established under Section 68(1) of the Indian Electricity Act, 2003 and the Works of Licensees Rules 2006.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.A.Thiayagarajan for R1
Government Advocate
M/s.M.Rajeswari for
Mr.SMS.Johny Basha for R2 to R6

W.P.(MD).No.14390 of 2019

N.Sellaperumal

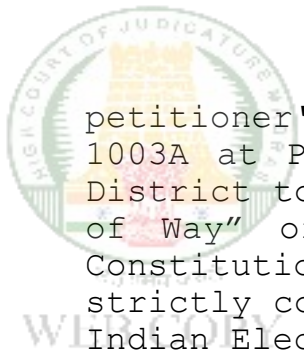
...Petitioner

-Vs-

- 1.The District Collector,
District Collectorate,
Madurai, Madurai District.
- 2.Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Rep. by its Director (Transmission Projects),
Koyambedu, Chennai - 600 107.
- 3.The Chief Engineer,
Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Transmission Wing,
Koyambedu, Chennai - 600 107.
- 4.The Superintending Engineer,
Tamilnadu Transmission Corporation Limited.
General Construction Circle,
Transmission Wing,
T.N.E.B. Madurai Region,
K.Pudur, Madurai - 625 007.
- 5.The Executive Engineer,
(TANGEDCO), Transmission,
T.N.E.B., Madurai Region,
K.Pudur, Madurai - 625 007.
- 6.The Assistant Executive Engineer,
Samayanallur,
Samayanallur Post,
Madurai - 625 402.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to forbear the 4th respondent from carrying out the works to erect the High Tension Tower and lines over the



petitioner's land in Survey Number S.Nos.100/1, 99/4, 99/7, 100/2A, 1003A at Paravai (Bit - II) Village, Madurai North Taluk, Madurai District to an extent of 1.22 hectares, without acquiring the "Right of Way" of the Petitioner's Right under Article: 300 A of the Constitution of India and consequently direct the respondents to strictly comply the procedure established under Section 68(1) of the Indian Electricity Act, 2003 and the Works of Licensees Rules 2006.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.A.Thiayagarajan for R1
Government Advocate
M/s.M.Rajeswari for
Mr.SMS.Johny Basha for R2 to R6

W.P. (MD).No.14497 of 2019

P.Vasanth

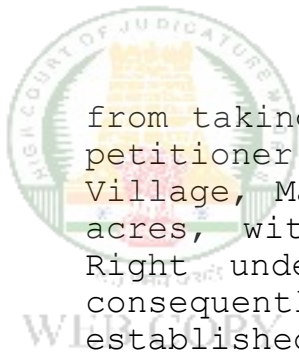
...Petitioner

-Vs-

- 1.The District Collector,
District Collectorate,
Madurai, Madurai District.
- 2.Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Rep. by its Director (Transmission Projects),
Koyambedu, Chennai - 600 107.
- 3.The Chief Engineer,
Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), Transmission Wing,
Koyambedu, Chennai - 600 107.
- 4.The Superintending Engineer,
Tamilnadu Transmission Corporation Limited.
General Construction Circle,
Transmission Wing,
T.N.E.B. Madurai Region,
K.Pudur, Madurai - 625 007.
- 5.The Executive Engineer,
(TANGEDCO), Transmission,
T.N.E.B., Madurai Region,
K.Pudur, Madurai - 625 007.
- 6.The Assistant Executive Engineer,
Samayanallur,
Samayanallur Post,
Madurai - 625 402.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to forbear the 4th respondent



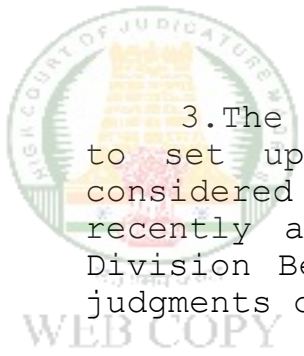
from taking steps to erect the High Tension Tower and lines over the petitioner's land in Survey Number 100/2B at Paravai (Bit - II) Village, Madurai North Taluk, Madurai District to an extent of 1.20 acres, without acquiring the "Right of Way" of the Petitioner's Right under Article: 300 A of the Constitution of India and consequently direct the respondents to strictly comply the procedure established under Section 68(1) of the Indian Electricity Act, 2003 and the Works of Licensees Rules 2006.

For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.A.Thiayagarajan for R1
Government Advocate
M/s.M.Rajeswari for
Mr.SMS.Johny Basha for R2 to R6

COMMON ORDER

The petitioners seek a Mandamus directing the 4th respondent, District Collector to dispose their representation to forbear from taking steps to erect the High Tension Tower and Lines over the petitioners' land in S.No.26/4A3C at Vikiramangalam Village, Usilampatti Circle, Madurai District and S.Nos.100/1, 99/4, 99/7, 100/2A, 1003A, 100/2B at Paravai (Bit-II) Village, Madurai North Taluk, Madurai District to an extent of 1.20 acres without acquiring the Right of Way of the petitioners' Right under Article 300 A of the Constitution of India and consequently direct the respondents to strictly comply with the procedure established under Section 68(1) of the Indian Electricity Act, 2003 and the Works of Licensees Rules 2006.

2.The petitioners own agricultural lands situated in the survey numbers aforesaid (properties in question). These writ petitions are triggered by the action of the fifth respondent proposing to erect High Transmission Tower for implementation of a project for erection of High Tension Electric Towers upon the lands in question. The challenge is made on the ground that firstly, no proper intimation / notice has been issued to the petitioners in this regard. Secondly, the petitioners state that the lands, where the project is proposed are agricultural lands, as a result, the viability of the lands as well as the marketability of the same will stand entirely compromised. The lands being agricultural in nature, the livelihood of the petition will be hit. Lastly, he states that it is only a Right of Way that could be sought by the respondents and not a right of acquisition of the land which is what would be the consequence of the action of the respondent. As for as the last contention of the petitioner is concerned, it is accepted straight away as the action of the respondents in seeking to erect High Tension Tower upon and lines over the petitioner land does not constitute acquisition of the land but is premised on only the availability of a 'Right of Way.



3.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.

4.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."

5.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."

WEB COPY

6. 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.

7. The District Collector before whom the representation of the petitioners are pending shall consider the same and after hearing both the respondents as well as the Land owners, 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 properties 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 properties in question, shall be kept in abeyance till such time orders are passed in this matter by the fourth respondent as above.

8. These writ petitions are disposed of with the aforesaid terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar

To

1. The District Collector,
District Collectorate,
Madurai, Madurai District.

2. The Director, Tamilnadu Transmission Corporation Limited.
(TANTRANSCO), (Transmission Projects),
Koyambedu, Chennai - 600 107.

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Executive Engineer,
(TANGEDCO), Transmission,
T.N.E.B., Madurai Region,
K.Pudur, Madurai - 625 007.

+3 CC to M/s.T.LAJAPATHI ROY, Advocate SR-77188, 77189,77199
+1CC TO Mr.SPECIAL GOVERNMENT PLEADER, SR NO.76950

W.P.(MD)Nos.21266 of 2018,
14390 & 14497 of 2019
22.07.2019

GNS/TM
MS/19.09.2019/8P.8C