

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.8007 OF 2019

Date: 21.08.2019

Between:

MIG Allottees (Residential) Welfare Association
With registration No.3247 of 2000,
Rep., by its President V.George,
S/o.Late V.Swamy Das, Aged about 63 yrs,
R/o.MIG-168, Phase IV, APHB Colony,
Gachibowli, Hyderabad.

.....Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Municipal Administration and
Urban Development Department,
Secretariat, Hyderabad & others.

.....Respondents



The Court made the following:

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ORDER:

Heard Sri G. Ramachandra Reddy, learned counsel for petitioner, learned Government Pleader for respondent No.1, Sri Sampath Prabhakar Reddy, learned Standing counsel for respondents 2 to 5, Sri R. Vinod Reddy, learned Standing counsel for respondents 6 and 7, Sri C.Buchi Babu, learned Standing counsel for respondent No.8 and Sri P.Sriraghuram, learned Senior counsel for respondents 9 to 11.

2. Ac.103.19 cents of land in Gachibowli village vested in Telangana State Housing Board (Housing Board). A major portion of this land was developed for housing purposes layout was formed and accordingly about 500 housing plots were made and sold. After developing residential lay out, the Housing Board, had Ac.26.41 cents. The Housing Board entered into joint-development agreement with DLF Commercial Developers Limited (DCDL) for development of land admeasuring Ac.26.255 cents in Sy.Nos.129 (P), 130, 131 (P) and 132 of Gachibowli village on revenue sharing basis. The DCDL obtained approval from Ministry of Commerce, Government of India for development of specific IT/ITES Special Zone on 07.04.2007. Accordingly, multi-tenant SEZ Complex was constructed and became operational by utilizing portion of the above mentioned land. It appears, the DCDL developed 3 Million Square feet office space in a phased manner. The DCDL proposed to utilize the remaining extent of land for construction of additional office space. The developer expects that additional work space would generate 30,000 more jobs. If the property is developed the

Housing Board would also benefit by around .185 Crores on revenue sharing Basis. The DCDL de-merged IT/ITES Special Zone with M/s. DLF Infocity Hyderabad Limited. Thus, the DLF Infocity Hyderabad Limited is the entity which is undertaking the development of remaining extent of land. In the remaining extent of land there is an existing 220 KV high tension electricity overhead line passing through Gachibowli-Shahpur Nagar-Yerragadda. This transmission line is coming in the way of proposed construction by the developer. Therefore, an application was made by the developer to the Transmission Corporation (T.S.TRANSCO) requesting to remove the overhead lines and to relocate them. It appears, the Transmission Corporation expressed its inability to undertake the job as it requires huge financial commitment but agreed to take up diversion of the high tension transmission lines if the developer incurs the expenditure for laying underground cable network. The developer had agreed to undertake the job and to incur the expenditure and requested for accepting the proposal to remove the overhead lines and to lay underground cable by utilizing public road.

3. The Transmission Corporation conducted inspection for technical feasibility and survey on the request of the developer. Accordingly, plans were drawn for diverting the transmission lines and to construct underground cable system. Accordingly, approvals were granted by the Corporate Office and the DCDL was authorized to undertake shifting of transmission lines under the supervision of the Transmission Corporation. The Transmission Corporation also applied to the Greater Hyderabad Municipal Corporation (GHMC) to grant permission for cutting of road by

collecting charges from the DLF Infocity Hyderabad Limited. The DLF Infocity Hyderabad Limited agreed for all the conditions and initiated steps to undertake construction of underground electricity cable network.

4. At this stage, the writ petition is instituted by the residential welfare Association forming part of Phase-IV of the Housing Colony in Gachibowli. Petitioner-Association is opposing shifting of transmission lines and laying transmission lines through common road forming part of Phase-IV. Petitioner-Association expresses apprehension that it may affect existing drainage and water lines and may cause threat to life of residents of the colony.

5. In this writ petition petitioner prays to issue writ of mandamus directing the respondents not to shift the high tension 220 KV transmission line from its existing place to the Housing Board residential colony and laying underground cabling abutting the residential houses of petitioner-Association.

6. Learned counsel for petitioner contended that the Housing Board is the owner of land and it is for the owner of land to request for shifting of transmission lines, but not the developer. The developer has not obtained consent from the Housing Board for diversion of the existing transmission lines. Therefore, the exercise now undertaken is *ex-facie* illegal. He would further submit that when the agreement was entered into with DLF by the Housing Board, they were aware of the existing transmission lines. The land below the existing transmission lines is kept aside. Further, there is a public road in the DLF Complex and the electrical lines could have been shifted to that road instead of laying the underground electricity cabling outside the premises. Even assuming that the

existing transmission line is coming in the way of development of remaining extent of land by the developer, the underground cable work could have been taken up in the said complex itself instead of moving it outside the complex. No justification is made to shift the transmission lines out of the DLF complex. He would further submit that there is a possibility of the existing drainage lines and sewerage lines being affected and in such case, grave prejudice would be caused to the members of the petitioner-Association.

7. He would further submit that the arbitrary action is evident from the fact of shifting of transmission lines and laying underground cabling only to the extent of property of DLF. If it is the intention of Transmission Corporation to go for underground cabling they ought to have undertaken the exercise for the entire stretch of the high tension transmission line but cannot confine only to the extent of property of DLF. He extensively referred to the provisions in Sections 30, 53, 86, 62 and 88 of the Electricity Act, 2003 and Rules 6 and 7 of the Rules, 2006, in support of his contention that private entity cannot undertake laying of transmission lines and that there are no safeguards ensured to the residents, if such transmission line is laid offending the provisions of the Act and that there is no consent obtained from the Sewerage Board and no notice was issued under Rule 7 to the occupiers of the Housing colony in whose colony the present underground cabling work is proposed.

8. This Court by order dated 16.04.2019 granted interim direction as prayed for. The prayer in I.A.No.1 of 2019 is to direct the respondents not to execute the work of shifting of high tension

220 KV line. Initially the order was operative for a period of ten weeks but subsequently, it was extended from time to time.

9. On behalf of M/s. DLF Infocity Hyderabad Limited, I.A.Nos.2, 3 and 4 of 2019 are filed. In I.A.No.4 of 2019 it is contended that the Managing Director/Chairman of DLF Ltd., and the General Manager, DLF Ltd., are no way concerned with the issue involved in this writ petition. According to learned Senior counsel representing the DLF Infocity Hyderabad Limited, respondents 9 and 10 are neither proper nor necessary parties. Therefore, the writ petition is liable to be dismissed against respondents 9 and 10.

10. In I.A.No.2 of 2019 the DLF Infocity Hyderabad Limited, prays to implead it as 11th respondent. According to learned Senior Counsel, DLF Infocity Hyderabad Limited is now vested with right, title and interest on IT/ITES SEZ project at Gachibowli. Therefore, it is necessary and proper party to the writ petition. In I.A.No.3 of 2019 petitioner prays to vacate the interim order granted on 16.04.2019.

11. According to learned senior counsel the Writ Petition is not maintainable as the petitioner-Association cannot seek a mandamus to direct the respondents not to shift the high tension electrical 220 KV line and the petitioner-Association has no locus standi to question the proceedings issued by the Transmission Corporation for diversion of high tension transmission lines. According to learned Senior Counsel after development of housing colony, the roads in the housing colony are vested in GHMC and GHMC is the owner of said land and it has consented for digging of

road to lay the transmission lines. The petitioner-Association has no locus standi to oppose laying of transmission lines on the public road.

12. Learned senior counsel would emphasize that the 11th respondent is representing the Housing Board and as developer it is developing the property for commercial exploitation and as the development is on revenue sharing basis, the Housing Board would also get benefited, if the property is developed. As the existing transmission line is coming in the way of such development activity, a request was made for diversion of transmission lines, outside the premises. Though it is the responsibility of T.S.TRANSCO to develop underground cabling, as the T.S.TRANSCO expressed its inability to undertake the exercise due to financial constraints, the developer has volunteered to undertake the job on behalf of T.S.TRANSCO by incurring entire expenditure including laying of cable and re-carpeting of the road used for laying cable. He would submit that all steps would be taken to minimize the inconvenience. He also submits that drainage and drinking water lines are not going to be affected in any manner. He would fairly submit that if there is any damage, the same would be repaired/re-constructed by the 11th respondent.

13. Learned senior Counsel emphasized that the trend now all over the world is to lay electricity transmission lines under ground. Under ground cabling is safe as compared to over head transmission lines.

14. Learned Senior Counsel would urge that there is no statutory violation or fundamental right of petitioner and it is in the larger public interest to go for under ground cabling. He would submit that construction of proposed complex would result in fresh employment opportunities and atleast 20,000 un-employees would benefit if the project is completed. On account of stay, granted by this Court, under ground cabling work activity could not be taken up though entire material required for the cabling work was purchased and dumped at the site and as a consequence, construction of new complex also could not be taken up, resulting in huge financial loss to the 11th respondent as well as to the Housing Board.

15. In the counter affidavit filed by the Transmission Corporation, they also justified the requirement to go for under ground cabling by replacing existing overhead high tension transmission lines on account of massive construction activity going on in the city.

16. The basic facts are not in dispute. The entire extent of land belongs to the Housing Board. A portion of land was developed for housing colony. The Housing Board proposed to utilize the remaining extent of land for commercial purpose. Accordingly, Housing Board entered into development agreement with the DCDL [the DLF Infocity Hyderabad Limited is the successor]. Consequent to formation of Housing colony, the open spaces including roads in the said housing colony vested in GHMC. Thus, all the public roads in this housing colony belong to GHMC and are not private roads. High tension over head line is passing through the property now vested in the 11th respondent. This transmission line is

coming in the way of development of balance extent of land in the custody of 11th respondent. DLF therefore, requested Transmission Corporation to shift the transmission lines and agreed to incur the entire expenditure for shifting of transmission lines. Certainly over head lines as compared to under ground cable is hazardous and can result in accidents also. Further, it is not disputed that in and around Gachibowli area there is lot of development activity and several high rise buildings have come up. The over head transmission lines would certainly cause obstruction to development activity and may also have serious consequences in case of an accident. Therefore, in future underground cabling is the preferred option.

17. Though, learned counsel for petitioner vehemently contended that there exists public road passing through the land in possession of 11th respondent, the proposed underground cable could have been laid on that road instead of road passing through the Housing Colony, learned counsel was unable to place before this Court material to show that there exists a public road. On the contrary, the maps filed by petitioner would also show that there is no thoroughfare from the land in possession of 11th respondent. Thus, apparently, there is no public road passing thorough the premises under the control of 11th respondent, and the road on which the proposed underground cabling is taken up is a public road. The GHMC has consented for digging of road and laying of underground cabling.

18. The contention of learned counsel for petitioner that residents of the housing colony have vested right and without their consent no development activity can be taken up on those roads is

stated to be rejected on two grounds. Firstly, it is not a gated community. It is a public road having access to all road users and not exclusively meant for residents of housing colony developed by the Housing Board; and secondly, as the road vested in GHMC, the residents of housing colony have no right on those roads and their consent is not required for any activity to be taken up on those roads. Petitioner has no manner of right to challenge the decision of T.S.TRANSCO to shift its high tension transmission line outside the premises in the custody of 11th respondent and within the public road.

19. The only concern of the residents of the colony can be that no inconvenience should be caused to them in commuting to their work place etc., when the cabling work is undertaken and that the sewerage lines and drinking water lines should not be affected. As fairly submitted by learned Senior Counsel for the 11th respondent, the 11th respondent would undertake cabling work with minimum inconvenience and minimum road cutting and if there is any possibility of sewerage line or drinking water line being disturbed/affected while undertaking the cabling work, they would reconstruct and would ensure that no inconvenience would be caused to residents in any manner. The said statement of learned Senior Counsel for 11th respondent is taken on record.

20. According to the counter affidavit filed on behalf of Transmission Corporation, the Corporation is opting to lay underground transmission lines in future and in a phased manner. It is asserted that all necessary precautions are taken in undertaking and laying of underground cabling work and that the Transmission Corporation would supervise the work undertaken

by the 11th respondent. Infact 11th respondent is acting as an agent to execute the work of diverting the overhead transmission lines to underground transmission lines on behalf of T.S.TRANSCO and therefore, the Transmission Corporation alone is responsible for laying of proper transmission lines and in ensuring that no untoward incident would occur while laying transmission line and after transmission line is made operational. Thus, the apprehension expressed by petitioner is baseless.

21. For the aforestated reasons, the writ petition merits no consideration and is accordingly dismissed. Pending miscellaneous petitions, if any, shall stand closed.

P.NAVEEN RAO,J

Dated : 21st August, 2019
Rds

