

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.13164 OF 2019

ORDER:

This Writ Petition is filed assailing the action of the respondents in issuing notice dated 17.06.2019 proposing to erect electricity transmission towers in the land of the petitioner in Sy.No.455, situated at Laxmipuram Village, Burghampadu Mandal, Bhadracharya-Kothagudem District under the Sita Rama Lift Irrigation Scheme (LIS), 400 KV/Construction/Warangal, without following the mandatory provisions of Electricity Act, 2003 (for short 'the Act of 2003') and without making payment of compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act of 2013'), as illegal and arbitrary and also the order of this Court dated 01.05.2019 in WP No.10139 of 2019 and consequently to direct the respondents not to interfere in the land of the petitioner.

2. Brief facts which are necessary for disposal of the writ petition are as follows:

It is the case of the petitioner that he is the owner and pattadar of land to an extent of Acs.6.00 in Sy.No.455/12 and Ac.1.25 gts in Sy.No.455/13 of Lakshmipuram, H/o.Burgampahad Revenue Village, having purchased the same through registered sale deed dated 25.07.2003 bearing document No.4206/2013 from its rightful owner Smt.Gummadi Guravamma. He was issued a pattadar pass book and title deed bearing No.950

in respect of the land covered in Sy.Nos.455/12 & 455/13. With an intention to undertake industrial operations, the petitioner executed a sale deed in favour of Vasavi Industries, of which, he was the sole Proprietor/Managing Partner. Subsequently, he made an application for conversion of the subject land into non-agricultural purpose. When the respondents high-handedly tried to take up the construction of LILO of one circuit of 220 KV KTPS V Lower Sileru-II line to proposed Pump House-I at B.G.Kothur, through the petitioner's land, he filed WP No.10139 of 2019, wherein this Court disposed of the writ petition directing the respondents therein not to dispossess the petitioner from the subject land, without following due process of law. Instead of initiating the proceedings under the Act of 2013, impugned notice dated 17.06.2019 was issued purportedly under Section 164 of the Act of 2003 indicating that a nominal compensation would be paid for any yield component of trees felled. Though the petitioner filed reply on 22.06.2019 objecting to the proposed erection of transmission towers in the subject land, the respondents are proceeding with their high handed action to erect the works on 27.06.2019. That the impugned notice is not in consonance with the guidelines dated 15.10.2015 issued by the Government of India, Ministry of Power for payment of compensation towards damages with regard to right of way.

3. Counter affidavit and vacate stay petition is filed by the respondents stating that the Government of Telangana has taken up a lift irrigation scheme to provide water for irrigation namely 'Sitarama Lift Irrigation Scheme', which is about 20 kms in length

being laid from 220 KV KTPS 5-Lower Seleru-II to the proposed pump house-I at B.G.Kothuru Village, to provide water for irrigation and drinking purposes to the Khammam and Bhadradri Kothagudem Districts. The Government has published the said scheme in the Telangana Gazette No.71, dated 05.05.2018. As per the directions of this Court in WP No.10139 of 2019, notice dated 17.06.2019 was served on the petitioner informing him that in view of powers conferred under Section 164 of the Act of 2003, two towers bearing 1/0 and 2/0 are to be laid in Sy.No.455/12 and 455/13 of Lakshmipuram Village, Burghampadu Mandal, Bhadradri-Kothagudem District. That total 73 towers have to be erected, out of which, 68 tower foundation have been completed and 61 towers are erected. The tower No.1/0 is to be located in the petitioner's land and tower No.2/0 only two legs are to be located in the petitioner's land and the other two legs in the adjacent land of another farmer. That the erstwhile State of Andhra Pradesh had issued G.O.Ms.No.115 Energy (PRIII) Department dated 07.10.2003 empowering the APTRANSCO to exercise powers under Section 164 of the Act of 2003, read with Section 10 of the Indian Telegraph Act, 1885 (for short 'the Act of 1885'). The TSTRANSCO vide office order dated 12.06.2014 has adopted the acts, rules, regulations, manuals, guidelines etc., that existed as on 01.06.2014 in APTRANSCO with effect from 02.06.2014. The Act of 2003 is included at Sl.No.12 of the IV Schedule of the Act of 2013, as such, the provisions of the Act of 2013 are not applicable to the erection of towers and laying of lines by the Transmission Corporation by exercising the powers

under Section 164 of the Act of 2003 read with Section 10 of the Indian Telegraph Act, 1885 (for short 'the Act of 1885'). Section 10 (b) of the Act of 1885 stipulates that the Central Government shall not acquire any right other than that of the user only in property over which the telegraph authority places any telegraph line or post. That no notification had been issued under the Act of 2013 to acquire the lands for the purpose of placing electric supply lines or agricultural poles as the land need not be acquired to erect the transmission towers by TSTRANSCO by exercising powers under Section 164 of the Act of 2003 r/w Section 10 of the Act of 1885 and that the provisions of the Act of 2013 do not over ride or render the provisions of the Act of 2003 otiose. That by laying of lines and transmission powers, the TSTRANSCO does not become owner of the land and exercises only 'the right of user' and adequate provisions are made under the Act of 1885 to pay the compensation and that if the petitioners are aggrieved, they can also file applications before the District Judge in whose jurisdiction the property is situated. Since already 61 towers are laid, the alignment of the line cannot be changed to benefit the petitioner and that if the alignment is changed, there will be right of way problems from other farmers. In the notice dated 17.06.2009 it is stated that they are ready and willing to pay the compensation for the yield component of the trees so fell and the crop damaged so assessed by the Revenue/Horticulture department or any other competent authority and that the petitioner is not being dispossessed from his property and he is entitled to carryon agricultural activities.

4. Rejoinder is filed by the petitioner reiterating the averments in the affidavit filed in support of the Writ Petition, denied the averments in the counter affidavit stating that the impugned notice is a vague without proper particulars about number of transmission towers and compensation that would be paid to the petitioner. The Land Acquisition Act, 2013 and the Act of 2003 are special enactments, which would prevail over the provisions of the Act of 1885. It is also stated that laying of electricity transmission towers would cause substantial damage to the lands beneath the tower, which diminishes the value of entire land permanently, as such, entire extent of the land has to be compensated.

5. Heard Sri Kowturu Vinay Kumar, learned counsel for the petitioner and Sri R.Vinod Reddy, learned Standing Counsel for the respondents.

6. Learned counsel for the petitioner submits that the Act of 2003 was included in Schedule IV of the Act of 2013, but the Government of India has issued notification in S.O. 2368 (E), dated 28.08.2015 making the provisions of the Act of 2013 relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule applicable to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said act, as such, the respondents have to follow the procedure under the Act of 2013, before dispossessing the petitioner, but in violation of the same, the respondents have issued impugned notice purporting to be under Section 164 of the

Act of 2003. He submits that the Government of India, Ministry of Power issued guidelines dated 15.10.2015 for payment of compensation towards damages incurred to Right of Way for transmission lines and asking all the State Governments and Union Territories to take action accordance with the guidelines. He submits that the said guidelines provide for grant of compensation at the rate of 85% of the land value as determined by the District Magistrate or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure; compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per the categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/Guideline value/Stamp Act rates. He submits that the State of Andhra Pradesh has issued guideline for payment of 100% of the land value for tower base, as such, the action of the respondents in dispossessing the petitioner by erecting the towers through the land of the petitioner, is illegal, arbitrary and in violation of Articles 14, 19 and 300-A of the Constitution of India.

7. On the other hand, Sri R.Vinod Reddy, learned Standing Counsel submits that by virtue of powers conferred under Section 164 of the Act of 2003, impugned notice was issued in pursuance to orders passed by this court in WP No.10139 of 2019. He submits that the respondents are proceeding only to erect towers

from the land of the petitioner, as already other towers are laid in adjacent land, as such, there is neither violation of orders passed by this Court in WP No.10139 of 2019 nor any provision of law. He submits that the respondents are not obligated to acquire any land of the petitioner, but they are only exercising Right of Way under the provisions of the Indian Telegraph Act read with the Act of 2003. He submits that the petitioner is neither divested of title of the land nor he is dispossessed from the same, as such, the question of acquiring the land of the petitioner does not arise. He submits that if any damage is caused to the petitioner's land, he will be compensated after laying of the lines, as per the provisions of the Indian Telegraph Act. He also submits that if the petitioner is aggrieved by the action of the respondents, he has to avail alternate available remedies under law. He also submits that no notice is required to be issued to the land owners prior to laying of lines and that the land owners are only entitled for compensation after lines are laid. He also submits that the Act of 2003 is included in Schedule IV of the Act of 2013, as such, the provisions of the Act of 2013 has no application to the facts of the case (sub-section 3 of Section 105 of the land acquisition act, notification issued.) In support of his contention, he relied on the judgments reported in **G.V.S.Rama Krishna v. A.P.TRANSCO [2009 (3) ALD 343]**, **Devisetty Ramaswamy v. Chief Engineer [2013(4) ALD 88]**, **Power Grid Corporation of India Limited v. Century Textiles and Industries Limited [(2017) 5 Supreme Court Cases 143]** and also judgment of this Court in **Bommi Reddy**

Narasimha Reddy v. Power Grid Corporation of India Limited
[2014 (1) ALD 697].

8. In view of the rival contentions/pleadings, the point that arises for consideration is whether the respondents are obligated to follow the procedure envisaged under the Act of 2013 before laying electric lines from the land of the petitioner?

9. Admittedly, petitioner was impugned notice under Section 164 of the Act of 2003 by the respondents, on 17.06.2019, in pursuance to orders passed by this Court in WP No.10139 of 2019, which is filed by the petitioner. For the purpose of convenience, said notice reproduced as follows:

“TRANSMISSION CORPORATION OF TELANGANA LIMITED
 SITA RAMA Lift Irrigation Scheme (LIS), 400KV/CONSTRUCTION/WARANGAL

NOTICE UNDER INDIAN ELECTRICITY ACT, 2003

To:Kuricheti Pandu Ranga Rao,
 S/o.Janardhan,
 R/o.Laxmipuram,
 Burgampadu(M),
 Bhadradi, Kothagudem
 District

In exercise of the powers vested with Transmission Corporation of Telangana Limited (TSTRANSCO) an undertaking of the Government of Telangana, Ministry of power under section 164 of Indian Electricity Act, 2003, a notice is hereby given that the 200 KV Power Transmission Line will pass through your property noted under. While due care will be taken to minimize the damage to standing trees and crops, certain minimum unavoidable damages is likely to take place during construction or erection of the aforesaid line. The trees so felled will be handedover to you. The compensation for the yield component of the trees so felled and the crops damaged will be paid to you as assessed by the Revenue/Horticulture Departments, or any other competent authority as may be decided or directed by the revenue department.

- 1) NAME OF THE LINE: 220kv DC Line from LILO OF 220 KV
 KTPS-SILERU-II TO 220 KV BG KOTTUR
- 2) LOCATION/SPAN : 1/0 & 2/0
- 3) NATURE OF WORK : Foundation, erection & stringing

4) Particulars:

- a) Name of the Village : Laxmipuram
- b) Name of the Mandal : Burghampadu
- c) Field Survey No. : 455/12 & 455/13
- d) Particulars of trees/Crop:
likely to be damaged : No crop

Received the above notice
Signature of the Land owner:

For TS TRANSCO

Sd/
Asst.Engineer
400 kv/Const/Warangal

Date 17.06.2019
Place: Laxmipuram”

It is vehemently contended by the learned counsel for the petitioner that when this Court by order dated 01.05.2019 specifically directed to follow due process of law and though the Act of 2003 has been placed in the IV schedule of the Act of 2013, the respondents have merely issued notice under Section 164 of the Act of 2003, for payment of nominal compensation for the land of the petitioner, as such, the procedure under Section 164 of the Act is not sufficient compliance of the order passed by this Court in WP No.10139 of 2019 and that the same does not amount to following the due procedure of law and compliance of the order passed by this Court. Before dealing with the issue, it is relevant to extract the provisions of the Act. Section 164 of the Act of 2003 reads as follows:

[
“164. Exercise of powers of Telegraph Authority in certain cases:

The appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit and impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885),

any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purpose of a telegraph established or maintained, by the Government or to be so established or maintained.”

10. Section 164 of the Act of 2003 empowers the appropriate Government, by an order in writing, to confer upon a public officer, licensee or any other person engaged in the business of supplying electricity, the power to place electric lines or an electric plant for the transmission of electricity, subject to such conditions and restrictions as it may think fit to impose. Thereafter, the authorized officer will have all the powers which a telegraph authority possesses under the Act of 1885 with regard to placing of telegraph lines and posts.

11. A perusal of the impugned notice goes to show that there are no particulars with regard to payment of compensation for the land of the petitioner under the Act of 2013. As per notification issued by the department of Central Government i.e., the Ministry of Rural Development, Government of India, vide Order vide notification S.O.2368(E), dated 28.08.2015, wherein the provisions of the Act of 2013 are made applicable to the land acquisition under the Act of 2003. The relevant portion of the said notification reads as follows:

“Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following order to remove the aforesaid difficulties, namely:-

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Act, 2015.

(2) It shall come into force with effect from the 1st day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.

12. A careful reading of the said notification goes to show that the provisions of the Act, 2013 will apply only to the extent of determination of compensation and benefits in accordance with the I, II and III schedules to the land acquisition in respect of Electricity Act, 2003 or for that matter, the enactments specified in IV schedule to the Act of 2013. The High Court of Karnataka while dealing with similar issue under National Highways Act, 1956 in the case of G.C.Thippeswamy v. The Union of India [2018 AIR CC 2147] held as follows:

“24. This Court does not find any force in the contentions raised by the learned counsel for the petitioners that the procedural aspects for undertaking the land acquisition proceedings as provided under the New L.A. Act of 2013 also will apply to the acquisition under the provisions of [National Highways Act](#), 1956. The position of law is on the contrary. Section 105 of the New L.A. Act of 2013 excludes the applicability of the New L.A. Act of 2013 to the acquisitions under the special enactments enumerated in the Fourth Schedule to the Act which includes [National Highways Act](#), 1956. Only to the extent of providing relief by way of uniform compensation, the Central Government has extended being empowered under Section 105(3) of the New L.A. Act of 2013, the provisions relating to compensation even to the acquisitions under these Special Enactments including the acquisitions under [National Highways Act](#), 1956.

25. The contention of the learned counsel for the petitioners that Social Impact Assessment study etc., were not carried out before hand, cannot be a ground to attack and challenge the land acquisition under [National Highways Act](#), 1956 as those provisions of New L.A.

of 2013 are not at all applicable to the acquisitions made under the [National Highways Act, 1956](#).

26. If the petitioners - land owners are not satisfied with the monetary compensation awarded under the aforesaid Awards dated 04/11/2017 and 08/11/2017 they have a remedy by taking the matter further before the concerned authorities, viz. Civil Court under [Sections 3-G and 3-H](#) of the National Highways Act, 1956 which provides for dispute with regard to amount of compensation to be referred to the Arbitrator under [section 3-G](#) of the said Act. Therefore, the petitioners have an alternative remedy with regard to the compensation monetary or in the form of Rehabilitation and Resettlement to be undertaken by the Respondent - NHAI even before the concerned Authority/Court through the process of Arbitration under [Section 3-G](#) of the said Act.

27. The provisions of the New L.A. Act of 2013 do not override or render the provisions of the [National Highways Act, 1956](#) otiose. On the contrary, they are harmonious and complimentary to each other with specified area of connectivity like the provisions relating to compensation under the New L.A. Act of 2013 applying to [National Highways Act, 1956](#) by virtue of delegated power given to the Central Government under Section 105(3) of the New L.A. Act of 2013.

28. The Hon'ble Supreme Court of India in the case of Union of India (UOI) Vs. Kushala Shetty and others 2011 (12) SCC 69 held that the Courts are not at all equipped to decide upon the viability and feasibility of the particular Project and whether the particular alignment of National Highway would sub-serve the larger public interest or not and the court can nullify the acquisition of land only in rarest of rare cases if it is found to be ex facie contrary to the mandate of law and tainted with mala fides."

14. The Hon'ble Supreme Court in Power Grid Corporation of India (supra) held as follows:

"27. At this stage, we deal with the direction of the Division Bench regarding compensation payable to the writ petitioner, or for that matter to the State Government. In the first instance, no such claim was laid by the writ petitioner in the writ petition or by the State Government before the High Court. Furthermore, the High Court could not have given this task to the District Collector, which is contrary to the provisions of Section 16 (c) of the Telegraph Act, 1885 which are extended to laying down of electricity lines. As per this provision, such an authority vests with the District Judge.

28. These are sufficient reasons to allow Civil Appeal No.10951 of 2016 preferred by the Power Grid by setting aside those directions. Ordered accordingly. We make it clear that if the writ petitioner feels that it is entitled to any compensation, the appropriate course of action is to file a

suit before the District Judge concerned for this purpose. It would also be apt to point out at this stage that the Central Government has framed guidelines dated 15.10.2015 in this behalf which *inter alia* provide that the issue of compensation may be resolved having regard to the mode and manner of assessment of compensation as per the said guidelines. Therefore, it would always be open to the writ petitioner to avail the remedy as per said guidelines.”

In view of law laid down by the Hon’ble Supreme Court in the aforesaid judgment, if the petitioner is entitled to compensation, he has to take recourse to the guidelines issued by the Central Government on 15.10.2015. Learned counsel for the petitioner submitted that the State of Andhra Pradesh, while adopting the aforesaid guidelines, issued G.O.Rt.No.83, Energy, Infrastructure & Investment (Pr.II.A2) Department, dated 29.06.2017 granting 100% compensation for the issues related to the Right of Way for laying of transmission lines. The Government of India, Ministry of Power, had issued the following guidelines dated 15.10.2015 for payment of compensation towards damages in regard to Right of Way for transmission lines.

- i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure.
- ii) Compensation towards diminution of land value in the width of Right of Way (RoW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on Circle rate/Guideline value/Stamp Act rates;

- iii) In areas where land owner/owners have been offered/accepted alternate mode of compensation by concerned corporation/Municipality/ under Transfer Development Rights (TDR) policy of State, the licensee/Utility, shall deposit compensation amount as per (i) & (ii) above with the concerned Corporation/Municipality/Local Body or the State Government.
- iv) For this purpose, the width of RoW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

The Central Government framed the aforesaid guidelines not only to facilitate an early resolution of Right of Way issues but also to facilitate completion of the vital transmission lines through active support of State/UT administration. The contention raised by the learned counsel for the petitioner that the petitioner is entitled to compensation under the provisions of the Act of 2013 has considerable force in view of the notification issued by the Central Government dated 28.08.2015, Ministry of Rural Development, Government of India. In the said notification, it is clearly indicated that the provisions of the Act of 2013 relating to determination of compensation is made applicable to all the cases of land acquisition and the enactments specified in IV Schedule to the said Act. Admittedly, the Act of 2003 is included in IV schedule to the Act of 2013, as such, the provisions of the Land Acquisition Act has necessarily to be followed while determining the compensation in respect of land acquired under the Act of 2003. The State of Andhra Pradesh also had taken a decision for

payment of 100% for land value for tower based vide G.O.Rt.No.83, Energy, Infrastructure & Investment (Pr.II.A2) Department, dated 29.06.2017. It is also pertinent to note that the Telangana State Electricity Regulatory Commission, Hyderabad, after considering the petitions filed by the aggrieved persons and also the guidelines of the Central Government vide notification dated 15.10.2015 advised the State Government, by virtue of sections 86 (2) of Electricity Act, 2003, vide proceedings dated 02.01.2018 to pay compensation under the Act of 2013. In paragraph 5 of the said advise, it is stated as follows:

“5.It may be noted that, a farmer who is a rightful authority to till, cultivate or use his land for whatever purpose he deems it proper, must not be deprived of compensation for providing his land for erection of transmission towers and lines. Commission is prima facie of the view that the government should exercise its power to make rules in respect of right of way and compensation to be paid to the owners of the properties including but not limited to land acquisition under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is also of the view that the procedure as may be set out under the said Aft for laying of towers and lines for transmission and distribution of power. The Commission considers that the rules should provide for proper decision on the aspects of right of way and compensation before alienation of the land acquired from the owners in respect of laying of towers and lines for transmission and distribution of power. Application of the Indian Telegraphic At, 1885 is insufficient and is of no consequence as it does not visualize the present days scenario of large size towers and transmission lines as compared to the size of telegraph pole on several parameters connected with land acquisition for the purpose of laying lines for transmission and distribution of power. While assessing the compensation, the following aspects have to be looked into by the competent authority under the RFCTLARR At, 2013, which can be expressed as below.

“The Collector when approached either by the landowner or transmission or distribution company shall initiate proceedings under Land Acquisition At, 2013. After appearance of both the parties, the enquiry shall be conducted in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. the Land Acquisition Officer shall secure the value of the land as

fixed by the government coupled with the documentary evidence filed by the claimant in respect of the land over which the towers are constructed and lines are laid. The authority competent must also survey the land and to find the actual extent of the land lost by the claimant both under the towers and lines, including the extent of land used for RoW purposes. While awarding the compensation, the L.A.O should follow the principles of natural justice and also the provisions of the L.A.Act, 2013. The Collector must bear in mind, the land and its location whether it is in interior village or nearer to the cities and urban areas and having potentiality for developing into residential and industrial complexes. If the land is interior in the village, it may not have much potentiality, if it is nearer to the cities and urban areas it will have potential for being converted into residential plots and commercial plots and therefore, obviously, the rates will be higher for the lands abutting the highways and roads rather than the interior lands. The competent authority shall fix the market value of the land on the basis of oral and documentary evidence apart from the above principles. After arrival of the market value of the land, the authority competent to pay the compensation amount of the land along with interest and solatium, if any. Total value of the land shall be paid if multiple lines are passing through the land diminishing total value.”

In fact, in this case, the petitioner is being deprived of the land at least to the extent of tower base i.e., within 4 legs of the tower, as petitioners may not be in a position to utilize the same at all, as such, he is entitled for compensation under the provisions the Land Acquisition Act, 2013. This Court is also of the view that the advise rendered by the State Regulatory Commission for payment of compensation in respect of land acquisition under Electricity Act, 2003 is based on sound reasons and the competent authority has to follow the same. Therefore, the contention of the learned Standing Counsel for the respondents that since they are using the land of the petitioner as Right of Way and that they are not acquiring the land of the petitioner, as such, they need not pay compensation under the Act of 2013, does not merit consideration.

15. Though the learned counsel for the petitioner submits that the Act of 2013 is a special enactment and it will prevail over the provisions of Telegraph Act, 1885, the power of the respondents under Telegraph Act under Section 10 is not seriously disputed and said issue is no longer *res integra*. This Court in similar circumstances, in case of **Devisetty Ramaswamy case (supra)** held as follows:

“Telegraph Act 1885-Sections 10, 16(1) and 17-Notice under S.10-Laying of transmission lines and erection of tower in lands of writ petitioner proposed, giving him option either to choose payment of compensation or delivery of removed trees and crops-Cannot be challenged and work cannot be stalled on ground of absence of prior notice/opportunity of hearing or failure to follow procedure under S.164 of Electricity Act 2003 an to acquire land by invoking provisions of Land Acquisition Act-No provision in 1885 Act which mandates prior notice or opportunity of hearing to owner/occupier of premises affected by laying of lines or posts-Under S.17 such right would arise only after laying of lines or posts and upon failure of authority concerned to act upon a requisition to remove or relocate such lines or posts etc.-While exercising power under S.164 of Act of 2003, APTRANSCO not required either to initiate acquisition of land or obtain consent from owner-S.67 thereof and Rules of 2006 framed thereunder, therefore, would have no application-No failure on part of APTRANSCO in following due procedure, made out-Since issue of petitioner’s entitlement to compensation would arise only at a later date, it cannot be a ground to stall work at grounding stage-Writ petition dismissed.”

The principle of law laid down in the above judgment goes to show that no notice is required to be issued before laying of electric lines. The Hon’ble Division Bench of this Court, in similar circumstances in the case of *Sri Sai Surya Gardens (P) Ltd., v. Union of India* [2004 (4) ALD 291 (DB)] held as follows:

“7.Right to property is not a fundamental right. The only right which is available to the citizens is Article 300-A that no person shall be deprived of his property save by authority of law. As noticed, under the provisions of the

Electricity (Supply) Act, 1948 read with Indian Telegraph Act, 1885, the petitioner may pray for payment of compensation.

8. A Full Bench of Kerala High Court in *Bharat Plywood and Timber Products Private Limited v. Kerala State Electricity Board, Trivendram*, AIR 1972 Ker.47 (FB), after considering the legality and validity of the provisions of the Indian Electricity Act, 1910 challenged on the ground that the same are discriminatory held that since section 51 of said Act empowered the authority to exercise powers available under the provisions of Chapter-III of the Indian Telegraph Act, 1885, the provisions are not open for challenge on the ground of discrimination. We are in full agreement with the view expressed by the Full Bench and following the said Full Bench decision of Kerala High Court, we hold that the ground of discrimination raised in the instant case falls to ground. Since the respondent-Corporation can exercise enough power to lay transmission lines across the property of the petitioner, except claiming compensation petitioner cannot validly challenge the action of the Board on the ground that it affects his valuable rights.”

Since the power of respondents to lay electric lines by virtue of powers conferred under Section 10 of the Indian Telegraph Act and Section 164 of Electricity Act, 2003 were upheld by High Court of Karnataka including this Court and also the Hon'ble Apex Court in the decisions supra, no prior notice is required to be issued to the owners of the land, before laying of electric lines. Therefore, it cannot be said that the respondents have not followed the due procedure, as envisaged under the provisions of the Act, 2013. In fact, notice was issued under Section 164 of the Act, 2003.

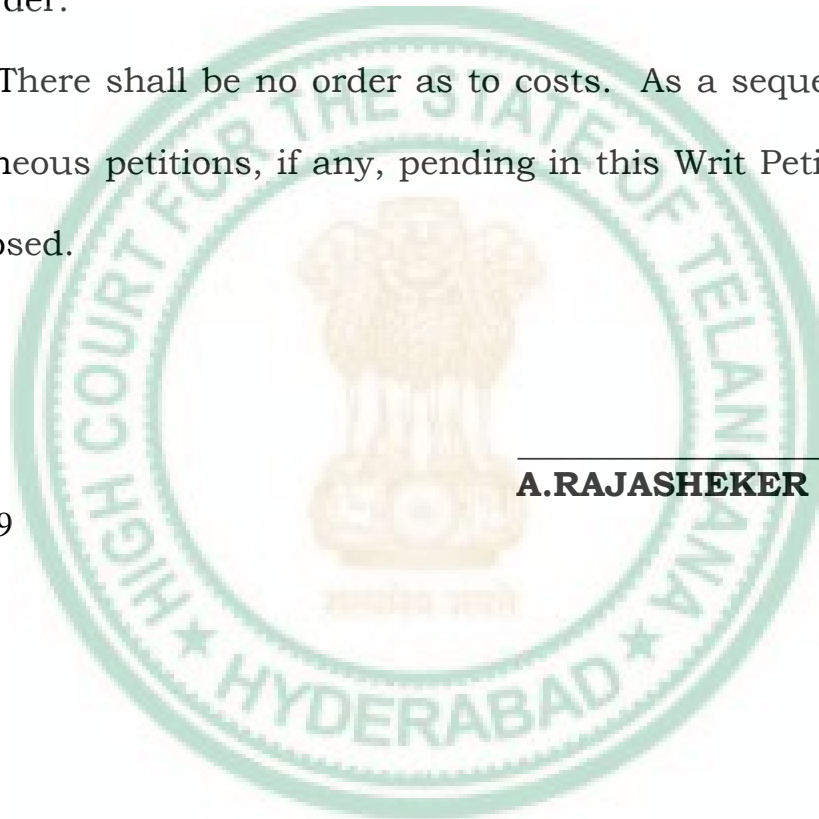
In view of above facts and circumstances, the Writ Petition is disposed of directing the respondent authorities to determine the compensation in respect of the land of the petitioner under the provisions of the Act of 2013 keeping in view of the guidelines of the Central Government dated 15.10.2015 and advise rendered by Telangana State Regulatory Commission to the

Telangana State Government under Section 86(2) of the Electricity Act, 2003, while awarding compensation. It is common that the respondent authorities forget about payment of compensation after laying of lines and petitioners have to run from pillar to post for getting their compensation by filing case after case, as such, the competent authority is directed to decide the amount of compensation, as stated above, and pay the same to petitioner within a period of three months from the date of receipt of a copy of this order.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

03-12-2019
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A.RAJASHEKER REDDY,J



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 13164 OF 2019



Date: 03.12.2019

kvs



