

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4024 of 2018

Date of Decision: 24. 01.2019

Gurmukh Singh

...Petitioner

versus

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. D. S. Sobti, Advocate
for the petitioner.

Mr. Atul Nanda, Sr. Advocate, with
Mr. Vikas Chatrath and Ms. Khushkaran, Advocate,
for the respondents.

Amol Rattan Singh, J.

By this petition, the petitioner challenges the order of the learned appellate Court (Additional District Judge, Ludhiana), dated 31.05.2018, setting aside the order passed by the trial court (Civil Judge (Junior Division), Ludhiana), dated 11.10.2017, by which the application filed by the petitioner (plaintiff in the suit) under Order 39 Rules 1 and 2 of the CPC had been allowed, with the respondents-defendants (Punjab State Power Corporation Limited and its officers) restrained from erecting poles and pillars and from laying overhead high tension electricity lines stated to be running over the land of the petitioner.

2. In fact, the suit filed by the petitioner is also one seeking a decree of permanent injunction restraining the defendants and their agents, assigns etc. from erecting poles and pillars and from laying overhead high tension electricity lines along the specified route shown in the site plan

attached with the plaint, as was contended to be running above the property of the petitioner, (measuring 12 kanals 1-1/3 marlas land comprised in *Khata* no.21/22, *hasra* nos.26//21, 3//1, 10/1 and 2/3 in village Choley, Hadbast no.114, Tehsil and District Ludhiana), as per the *jamabandi* for the year 2005-2006.

Further, a decree of mandatory injunction has also been sought by the petitioner-plaintiff, directing the respondents-defendants 'to deviate the existing line' as shown in green colour in the site plan attached with the plaint, to a more practical, economical and convenient route (as is stated to be shown in the colour yellow), so as to connect the high tension wires to the power station (described to be in the colour orange in the site plan).

3. The contention of the petitioner is that the respondents, with malafide intentions, have arbitrarily exercised power and have deviated from laying down the electricity lines in a straight line and in fact have 'made' a circuitous route, thereby leading to erection of more towers, also resulting in loss of electricity during transmission.

4. Before the trial court, it had been contended by the petitioner that he had reason to believe that no approval had been sought from the Central Electricity Authority prior to the line being laid and further, that he (petitioner-plaintiff) had not received any notice, nor had any official publication been made in the newspaper, inviting objections.

It was therefore contended that an irreparable loss was suffered by the plaintiff; the case set up in the plaint also being that he had made a horse riding facility for his daughter on the said land, which would be rendered useless on account of electricity lines running overhead.

5. Notice having been issued to the respondents-defendants by the

trial court, a preliminary objection had been taken by them that the suit itself was not maintainable and further, that the plaintiff had not come with clean hands.

On merits, it had been stated that vide a notification issued on July 25, 2014, various schemes had been proposed to be undertaken for the purpose of distribution of power, in order to improve the transmission and distribution system of electricity.

It was also stated that as a matter of fact they had made a publication of the schemes in two newspapers, despite which no objections were received.

Further, (as stated in the order of the learned trial court), the respondents-defendants had also contended that an estimate for the work was prepared and in fact more than 90% of it had been executed as per the estimate.

Hence, dismissal of the suit, as also the application seeking an interim injunction, was sought.

6. Having considered the pleadings and the arguments before it, the trial court first observed that as per the site plan annexed with the plaint, electricity wires would be running through the suit property, with the plaintiff having subsequently also contended that an alternative route could have been taken to lay down the lines.

That court then recorded a finding that a perusal of the notification dated 25.07.2014 showed that the work pertaining to installation of respective areas given in the notification, was without any specific reference to the area where the suit property is situate, and that in fact the suit property was not shown to be included in the notification at all.

7. It was next observed by that court that in the course of proceedings in the suit, certain interrogatories had been filed by the plaintiff, one of which was whether or not there had been any change, after the said publication dated 25.07.2014, in the route of the high tension wires to be drawn.

In reply to that, the respondents herein (defendants) had admitted that the route of the electricity line was changed after 25.07.2014, in the premises of the Punjab Agro Mega Food Boundary, from TL-36-A to TL 38-A after a deposit of Rs.66.50 Lacs was made by the food park. It was also stated that the original route had not been changed from TL-38 to 39 (which passed through the land of the plaintiff). The minor change had thus been made at the cost of Punjab Agro Mega Food Park, in their own land.

8. The trial court then recorded a finding that with the aforesaid admission of the defendants, though they contended that there was a minor change in the route at the cost of the food park, they had still not answered as to whether proper sanction had been obtained or not, or that it had properly notified such change in the route.

9. It was further noticed that in reply to another interrogatory, as to whether the name of village Chhole (in which the suit land is situate) had been mentioned, or any *khasra* number had been given to identify the suit land, the defendants had not given any specific reply and counsel appearing for them had stated that a reply to that was not required.

Consequently, holding that the defendants had not been able to produce any document to show that the notification actually covered the land belonging to the plaintiff, a restraint order was issued.

10. While doing so, the following judgments were cited by that

court:-

- i) **Binani Zinc Fibre v. Pandurang Harischandra Toraskar and others** 2000 (1) BCR 443;
- ii) **Smt. Susama Patel v. Grid Corporation of Orissa Ltd. and others** 1998 (3) CivCC 328;
- iii) **Sukhmander Singh v. Punjab State Electricity Board & Ors.** 2010 (1) CCC 050 (P&H); and
- iv) **Elihu Estate and Finance Pvt. Ltd. v. Union of India** AIR 2015 MP 98.

The first judgment had been cited on behalf of the plaintiff to contend that the civil court had jurisdiction to entertain a suit, as the remedy available under the Electricity Act, 1910, was only qua compensation for an injury caused by a licensee.

The second judgment was also cited on behalf of the plaintiff, on the issue of a scheme prepared by a licensee before taking up any work, to be duly approved by the Central Electricity Authority, which was then required to be published in the official gazette and local newspaper, with the licensee to thereafter ensure that as little damage was caused to properties as came in the way of the electricity line, and further, that where there was no scheme published for laying down such lines, the consent of the local authority or the owner or the occupier of any property was required to be taken in terms of Sections 12 and 18 of the Act of 1910, with the Electricity (Supply) Act, 1948, and Sections 28, 42 and Indian Telegraph Act, 1885.

11. The judgments in *Sukhmander Singhs'*, *Om Parkashs'* and *Elihu Estate and Finance Pvt. Ltds.'* case had been cited on behalf of the defendant corporation, to submit that, firstly, poles could be erected in the field of any private person also and that lines could run over that persons' land, with such person entitled to only seek compensation; and secondly, to show that there

is a bar on an injunction being issued against laying down transmission lines, in public interest.

12. The judgments cited by the Corporation were however held to be not applicable by the trial court, on the ground that none of them laid down that when, admittedly, an alternative route for laying the lines was available, the line must pass through a particular route.

Hence, noticing that the defendants had also admitted that the route of the line had been changed after the notification was issued on 25.07.2014, and two additional towers had been erected by them in the premises of Punjab Agro Mega Food Park, it was held there would be 'no hitch' for the lines to be laid through the other possible available route, as was shown in the site plan by the plaintiff.

Consequently, the injunction order was issued (by which also in the last part thereof, issues were framed in the suit itself).

13. That order having been appealed against by the respondents-defendants, the learned appellate court first noticed from the pleadings that as per the defendants, the route for the 220 KV electricity line was notified, with the notification also reading to say that as per the sanctioned scheme the defendant (licensee-present respondent) would have the power to place any wires, poles or apparatus for its purpose, and that no objection had been received from the plaintiff despite publication of the notification in two newspapers.

It was also noticed that as per the defendants, 90% of the work had already been executed, with no deviation to the route plan possible, though they had admitted that the route of the line had been changed after 25.07.2014, within the premises of the aforementioned food park.

14. Having noticed the above as also the contentions of counsel for the plaintiff to the effect that even the name of the village where the suit land is situate was not given in the notification, the appellate court referred to Section 164 of the Electricity Act, 2003 (hereinafter referred to as the Act), which reads as follows:-

“164. Exercise of powers of Telegraph Authority in certain cases.- The Appropriate Government may, by order in writing, for 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 co-ordination 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 to 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 purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

Section 10 of the Indian Telegraph Act, 1885, was also referred to by that court, to observe that in order to maintain a telegraph line, poles/posts could be erected in any property and that other than a right to compensation for the same, the owner did not have any other right.

Hence, referring to the judgment in *Elihu Estate and Finance Pvt. Ltd.* (supra), it was held by the appellate court that the question of obtaining any consent for erecting any poles and transmission line, on private land, did not arise.

Other judgments of this court and the Supreme Court were also

relied upon by the appellate court, as follows:-

- i) Harbans Singh and Ors. v. Punjab State Transmission Corporation Ltd. and Anr. in CWP no.25966 of 2017 decided on 06.12.2017;
- ii) G.V.S. Rama Krishna v. A. P. Transco rep by its Managing Director, Vidyudh Soudha and ors. 2010 (8) RCR (Civil) 2223;
- iii) Power Grid Corporation of India Ltd. v. Century Textiles & Industries Ltd. and Ors. 2017 (1) Recent Apex Judgments 696; and
- iv) Vivek Brajendra Singh v. State of Government of Maharastra and Ors. 2012 (4) BCR 116.

From the above, the ratio culled out by that court was that the process of electricity lines being laid should not be interrupted and that the land owner was only entitled to compensation and damages, if any.

15. The contention raised on behalf of the plaintiff before that court, that individual notices were required to be given to the land owners, was rejected, by referring to a judgment of a Full Bench of the Kerela High Court in Bharat Plywood Timber Products Lvt. Ltd. v. Kerela State Electricity Board AIR 1972 Kerela 47, to hold that if individual notices were to be given to each land owner (with the electricity line sometimes running into 100/1000 kms), the infrastructure could never be provided.

A judgment of this court in Dr. Mohan Lal v. Haryana State Electricity Board & Ors. 1990 CCC 560 (P&H) was also cited in the same context by the appellate court.

16. The argument on behalf of the plaintiff that erection of additional towers had been made only to change the route of the electricity line to avoid high tension cables from running over the food park and

therefore the sanctioned route was changed only to favour that park, was also rejected, on the ground that the route of the line had been changed only within the premises of that park, upon the management having deposited Rs.66.5 lacs with the licensee, and in fact the original route had not been changed outside the premises of the park.

Recording the above findings, the appellate court allowed the appeal of the respondents, thereby setting aside the injunction order passed by the trial court.

17. Before this court, though Mr. Sobti, learned counsel for the petitioner, initially had convinced this court that a patent illegality had been committed by the respondents in, firstly, not even notifying the correct route that the electrical line was supposed to take, and secondly, it having altered the route only to favour the food park referred to hereinafore, (thereby bringing the line over the property of the petitioner), and consequently lengthy arguments were addressed by him, all the issues raised in which, are being referred to hereinafter.

18. Notice having been issued in this petition and the respondents having appeared, they were called upon to show that the provisions of the Act had been complied with. Mr. Nanda, learned senior counsel appearing for them, had produced in court publications made in two newspapers, both showing the original route of the electricity line, and thereafter notifying the slight change in route made subsequently. Further, and very importantly, a site plan was placed on record by the respondents, which factually could not be refuted by learned counsel for the petitioner, showing that, as a matter of fact, the change in the route of the line was only within the area occupied by the food park and that too on payment of a hefty amount of Rs.66.5 lacs for

such alteration. The site plan (Ex.R2/2), which has been annexed with the affidavit of the Chairman-cum-Managing Director of the Corporation, shows that, originally, the line was running from towers TL-36, 37, 38 & TL-39, to be installed over the land of the food park, in a straight line.

The new alignment on the other hand, goes along (within) the boundary of the land occupied by the food park, over tower nos.TL-36, 36B, 36C, 37A and 38A, and from there onto TL-39, after passing over a small part of the petitioners' land.

What is seen is that the original TL-38 is shown in the same line and alignment as its substitute TL-38A. Thus, instead of the line going from TL-38 to TL-39 it now goes from TL-38A to TL-39, with that change making absolutely no difference to its situation over the land of the petitioner.

Mr. Sobti however had tried to project to this court that once the alignment had been shifted to TL-37A, thereafter the line need not have been taken to TL-38A and could have gone directly to TL-39, thereby bypassing the petitioners' land completely, which definitely would be a slightly shorter path for the line to take.

However, that argument does not stand up to the original contention (at least as understood by this court initially), that the re-alignment has actually affected the route to go over the petitioners' land; though if re-alignment was also to be made from tower TL-37A to TL-39, then that would definitely bypass the petitioners' land. To repeat however, that militates against the original contention, that the entire route had been changed only to favour the occupants of the food park, thereby prejudicing the petitioner; whereas as a matter of fact, the petitioner has not stood

prejudiced at all by the re-alignment that is proposed within the food park itself and if the petitioners' contention as made subsequently, is to be accepted, then obviously instead of over the petitioners' land, the line would go over the land of some other persons, from TL-37A to TL-39.

In reply to a specific query made to learned counsel for the petitioner, he, on instructions from the petitioner, could not deny that the land over which the line would then pass from point TL-37A to TL-39, belongs to different 'private persons' and is not government land.

In other words, the petitioner wishes that the original alignment be changed to leave his land and instead go over private land owned by other people.

19. Hence, as regards the allegation that the route of the line has been changed to the detriment of the petitioner, that argument is wholly without any basis and is actually a misleading argument, for which costs need to be imposed on the petitioner, it being very obvious that the re-alignment was made only within the area of the food park, on hefty payment made by that park, with the route of the original line in any case not having been changed qua the petitioners' land at all, or (if at all so as contended), to such a miniscule extent, that it does not even show up on the map, because as already noticed, learned counsel could not refute the depiction of the line as shown on the map annexed with the affidavit of the Chairman of the respondent Corporation.

Actually, on that short ground alone, this petition deserves to be dismissed. However, keeping in view the fact that certain issues were raised by Mr. Sobti, his arguments are still being referred to.

20. The first contention of Mr. Sobti had been that the publication in

owner or occupier under sub-section (2) of section 67;”

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The contention of learned counsel for the petitioner was that in terms of the above provisions, the respondents can only proceed after taking permission from the Central Government, which has not been done in any case and that in terms of Rule 3 of the Works of Licensees Rules 2006, the owner or occupier of the building has a right to raise an objection in respect of the works to be carried out and in case of such objections, the licensee is to obtain permission from an officer authorised by the Government, before such work can be carried out.

It may be stated here itself that the first argument with regard to permission to be taken from the Central Government alone, was abandoned by learned counsel the moment this court pointed out that in terms of Section 2(5) of the Act of 2003, an appropriate Government is defined to mean the Central Government only in the case of a generating company wholly or partly owned by it or in relation to any interstate generation or transmission etc. that is to take place. Clause (b) of the aforesaid provision specifically states that in any other case it would be “the State Government having jurisdiction under this Act;.”

21. Learned counsel next referred to Section 164 of the Electricity Act, 2003, which is again reproduced here for convenience:-

“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 co-ordination 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 to impose and to 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 purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

His contention was that even while exercising authority under Section 164, the appropriate Government could only in certain cases, undertake to lay electrical lines etc., and that the power cannot be used in any and every case.

22. In brief, his main contention remained that without notice issued to the petitioner and even with the scheme not having been duly published, nor the alteration in the route thereof having been published, the petitioner stood prejudiced by not being able to raise objections to the route of the line.

Thereafter, Mr. Sobti cited various judgments to submit that despite the bar contained in Section 145 of the Act of 2003, “injuncting a civil court to issue an injunction against any authority in respect of any action to be taken in pursuance of any bar conferred by the Act”, an injunction in such a situation could still be issued, as was correctly issued by the trial court though reversed by the appellate court.

In the judgment relied upon in support of that contention, in **B.L. Kantroo v. BSES Rajdhani Power Ltd.** 2009 (108) DRJ 239 (Division Bench of the Delhi High Court) (supra), it was observed as follows:-

“27. No doubt Electricity Act is a complete code in itself, but in the following cases, civil suit can be entertained even though the jurisdiction of the civil court may have been specifically

ousted. Where provisions of law are not complied with or the forum or tribunal does not act according to the fundamental principles of judicial procedure, the jurisdiction of civil court is clearly implied.”

23. In reply to the aforesaid arguments, Mr. Nanda, learned senior counsel appearing for the Corporation, first submitted that as regards the argument that no approval was taken from the State or the Central Government, there is not even a plea to that effect taken in the suit of the plaintiff and the argument raised in this revision petition, is therefore wholly beyond pleadings.

24. On the issue of no proper publication having been made, Mr. Nanda pointed to the affidavit of the Chairman dated 13.12.2018 (filed in response to a query made by this court earlier), to submit that a notification was first issued on July 25, 2014, showing therein the scheme/project of the work in question, which reads as follows, giving therein also the approximate length (12.463 kms) and the approximate costs etc.:-

Sr. No.	Name of work	Scope of work, Approx. Length of line in Kms.	Size of ACSR conductor Nominal Aluminium Area in mm	Approx. cost (Rs in Lacs)
2	LILO of one ckt. Of 220 KV Humbran-Ferozepur road Ludhiana at 220 KV Ladhawal (New).	12.463	420	927.25

He further submitted that the said notification was duly published in the Punjab Government Gazette dated 22.08.2014, in English and *Gurmukhi*, as also in the newspapers, The Tribune, and *Jagbani*, on July 30, 2014.

Subsequently, the revised route as regards the change in position of towers between TL-36 to TL-38, was also notified on November 02, 2016, published in the Government Gazette dated November 25, 2016, as also in the Times of India and *Ajit* dated 16.11.2016.

[The said notifications and publications have been duly annexed with the affidavit of the Chairman.]

25. Mr. Nanda then pointed to what was held by the Supreme Court in **Power Grid Corporation of India Limited v. Century Textiles and Industries Limited and others** (2017) 5 SCC 143, which is as follows:-

“19. Another submission made was that permission of the writ petitioner was not obtained which was needed as per Rule 3 of the 2006 Rules. Rule 3(a) reads as under:

“3. Licensee to carry out works.- (1) A licensee may-

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;”

(Emphasis applied in the present judgment only)

Thereafter, in the paragraphs following, their Lordships held that the said rule was not applicable in view of what is contained in Section 164 of the Act of 2003 (already reproduced hereinafore).

Further discussing the powers conferred upon a licensee in terms of the aforesaid Act, including powers to be 'borrowed' from the Telegraph Act 1885, their Lordships went on to hold that:-

“The legislature has not permitted any kind of impediment /

obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.”

To similar effect, Mr. Nanda referred to the judgment of a Division Bench of this Court in *Harbans Singhs'* case (supra), wherein it was held that:-

“.....the Parliament has not provided for any notice of hearing at that stage. It was further found unreasonable to confer right on the owners or occupiers of the land on the route to suggest alternates. If that process is adopted, the project will never be completed as any such decision would be subject to judicial review and the State or its functionaries may not be able to provide infrastructure.”

26. Consequently, he submitted, that with the procedure duly having been followed, with the petitioner not having raised any objection, and in any case, such objection not being raiseable qua the route of the line, but with him having a right of compensation if he had applied for it, the impugned order very correctly reversed the interim order passed by the trial court.

As regards the compensation to be paid, he refers to clause (d) of the proviso to Section 10 of the Telegraph Act, 1885, which reads as follows:-

“10. Power for telegraph authority to place and maintain telegraph lines and posts.--- The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immovable property:

Provided that---

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(d) In the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c); shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

Thus, he submitted that the power available under Section 164 of the Act having been exercised vide an order passed by the Government on 27.06.2011, the issue of payment of compensation in terms of the Telegraph Act, shall be considered by the competent authority if the petitioner seeks such compensation.

27. In response to Mr. Soltis' contention that he had no opportunity of raising objections because his land was not shown to be running under the transmission line even in the notification published in the newspaper in July, 2014, Mr. Nanda reiterated that it not being an acquisition proceeding but only a scheme to lay down electricity lines in public interest, with powers conferred under Section 164 to even invoke the provisions of the Telegraph Act, details of where the electricity line is to exactly run over would be immaterial, because individual objections in any case cannot be entertained on the route of the line, as has been held by the Supreme Court in the *Power Grid Corporation* case (supra).

Hence, he submitted that once the basic scheme had been published in the newspaper, there would be no cause to hear each and every individual objection qua the route of the line, especially when it has been shown before this court that the line was never changed for any malafide purpose, but only within a particular area of a particular entity (food park), that too on payment made for such re-alignment within that parks' own space.

28. As regards invocation of the power granted under Section 164 of the Act, Mr. Nanda placed on record (as part of a compendium including judgments), the order passed by the Secretary to the Government of Punjab, Department of Power, on June 27, 2011, such order having been issued on behalf of the Governor of Punjab, conferring upon the Corporation the said powers in respect of laying electrical lines and electrical plants to be established or maintained, and for the transmission of electricity by the corporation, subject to the following conditions.

- “1) that the Corporation shall cause transmission system notified, which shall contain the estimates of the capital expenditure, salient features of the transmission system and the benefits that may accrue therefrom;
- 2) that the Corporation shall give two months' notice in the Official Gazette and in two vernaculars (one in English and one in Punjabi) for seeking objections and suggestions from the persons concerned, which will be duly considered by the Corporation; and
- 3) that the power, conferred upon the Corporation shall be subject to the provisions of the Electricity Act, 2003.”

Thus, the conditions stipulated in the said order are that it would notify such transmission system, with the notification containing the estimate of the capital expenditure, the salient features of the transmission system and the benefits that may accrue therefrom.

No doubt, two months time is also required to be given in the official Gazette and in two newspapers, for seeking objections and suggestions from the persons concerned, which would be duly considered by it.

The last condition stipulates that the power conferred upon the Corporation would be subject to the provisions of the Electricity Act.

29. Finally, after referring to certain other judgments in his favour on the issue, learned senior counsel submitted that as regards an injunction on works for a public electricity transmission system, Section 145 of the Act of 2003 in any case bars the court from issuance of such injunction, obviously in larger public interest.

30. Having considered the arguments raised on both sides and having actually seen from the site plan annexed with the affidavit of the Chairman of the Corporation, that the route of the transmission line was never altered to suit any particular persons to the detriment of the petitioner (as already discussed in detail in paragraphs 18 and 19 hereinabove), and further, that publication of notifications issued was duly made, both, of the original route of the line as also of the rerouting within the food park area, I see no reason to interfere with the impugned order of the learned appellate court.

No doubt, Mr. Sobti has stated that the original notification does not show the name of the village where the land is situate, thereby not giving an opportunity of raising objections to the petitioner, but in the opinion of this court, the order issued on June 27, 2011, conferring powers under Section 164 of the Electricity Act, stipulating that the conditions that need to be met with by the Corporation, to lay down electricity lines, would be notification and publication of the scheme, showing therein the the estimates of the capital expenditure and the salient feature of the transmission system and the benefits to accrue therefrom, with the specific details of the route not required to be published, as the land in any case was not to be acquired, publication of the names of the villages/places over which the electricity line is to 'travel', though would have been advisable, cannot be held to be

mandatory, even as per the ratio of the judgment of the Supreme Court in the *Power Grid Corporation* case.

Undoubtedly, condition no.2 in the order dated 27.06.2011 does state that the Corporation would give two months' notice in the official gazette and in two newspapers, seeking objections and suggestions from the persons concerned, which would be duly considered by it. However, as has been held by the Division Bench of this Court in *Harbans Singhs'* case (supra), after reference to the *Power Grid Corporation* case, "individual notices were not required to be issued" and that it may not be possible to offer a hearing to all owners of small portions of land along the route of the electrical line, because if that process is to be adopted, the project would never get completed, with the State or its functionaries not able to provide the infrastructure required.

31. Though otherwise I agree with Mr. Sobti, as already observed hereinabove, that very correctly, the name of each village/prominent locality over which an electrical line is to pass, or where poles etc. are to be erected, should be given in the notification even in terms of the second condition laid down in the order dated June 27, 2011 itself, to enable the affected persons to raise objections, that would still not authorise a civil court to grant an injunction in the face of the statutory provision (discussed further ahead), seen with the ratio of the judgment of the Supreme Court in the *Power Grid Corporation*, and of the Division Bench of this court in *Harbans Singhs'* case.

32. Very obviously the petitioner now having complete notice of the line going overhead, he having filed a civil suit, a direction can be issued to the respondents by this court, even in this case, to decide any objections he files, even though it is a revision filed invoking jurisdiction under Article 227

of the Constitution in relation to a particular order of the appellate court. However, for the reason that at least the issue on any objection raised is to be considered by the respondents even in terms of their own order dated 27.06.2011, a direction with regard thereto is being issued at the end of this judgment.

33. Coming to the argument of Mr. Sobti that even in terms of Section 164 of the Act, the powers of a telegraph authority are to be exercised only in certain cases; in the opinion of this court, the appropriate Government having exercised such powers by issuance of the aforesaid order of June 27, 2011, vesting in the respondent Corporation all powers under the Telegraph Act in respect of electrical lines and electrical plants to be established or maintained by it, and for transmission of electricity, these purposes themselves would be the “certain cases” in respect of which the corporation has been vested with such powers, by a single order, because it would be extremely impractical to keep issuing orders whenever new lines are to be laid or maintenance is to be done, in any small pockets of the State.

Hence, that contention is rejected.

34. Mr. Sobtis' contention that with clauses (a), (b) and (c) of sub-section (2) of Section 67 of the Act not having been complied with, is also a contention to be rejected; firstly, for the reason that the appropriate Government has promulgated necessary rules in the form of the Punjab Works Licensees Rules 2008, wherein, as pointed out by Mr. Nanda, sub-rule (4) of Rule 3 states as follows:-

“(4) Nothing contained in this rule shall affect the powers conferred upon any licensee under section 164 of the Act.”

Hence, the power granted under Section 164 of the Act having

been exercised by the Government by issuance of the order dated 27.06.2011, conferring powers under the Telegraph Act on the corporation (licensee), that provision (Section 164) overrides all other provisions in the Act, for the purpose of laying down electricity lines, establishing electrical plants and for the transmission of electricity or telephonic/telegraphic communications.

Secondly, as held by the Supreme Court in the *Power Grid Corporation* case (supra), “The legislature has not permitted any kind of impediment /obstruction in achieving this objective and through the scheme of the Telegraph Act, 1885 empowering the licensee to lay telegraph lines, applied the same, as it is, for laying down the electricity transmission lines.”

As such, individual notices are not required to be given, and as regards the 'general notice' to be issued by publication of the route of the transmission line, in the opinion of this court the only right of a land owner being to receive compensation, if any is applied for and is assessed thereafter, non-publication of the names of such villages and localities would not vitiate the notifications issued even in terms of the order dated June 27, 2011, as the land is not being acquired. However, as said, to avoid such litigation, the respondents would be well advised to ensure that in all future publications, the names of the villages and localities over which the transmission line is to run, and in which towers/pillars/poles etc are to be erected, are duly published in the notification as also in the newspaper publications.

35. In view of what has been discussed hereinabove and held in the aforesaid judgment of the Supreme Court as also by this court (Division Bench) in *Harbans Singhs'* case (supra), it is now to be again specifically noticed at this stage, that what the petitioner has challenged in the present revision petition, is the reversal by the appellate court of the interim

injunction granted to him by the trial court.

Hence, reference to Section 145 of the Act having already been made, the said provision is reproduced as follows:-

“145. **Civil court not to have jurisdiction.**- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

(Emphasis applied by this court).

In the face of the provision, the judgment of the Delhi High Court in *B. L. Kantroo*, cited by learned counsel for the petitioner, is to be seen. That decision is essentially on the issue that a civil court would have jurisdiction to entertain a suit, except in cases that are specifically barred in terms of Sections 126 and 127 of the Act, or where an adjudicating officer appointed under the Act, is only empowered to so adjudicate.

Without therefore going into the issue of jurisdiction of the trial court to entertain the suit at this stage, which is not the issue under challenge in this case, and naturally is an issue that would be looked into by that court in terms of the statutory provision and law settled in that regard, as regards the interim injunction granted by that court, in my opinion that could not have been sustained in the face of the specific bar contained in Section 145, very clearly stipulating that “no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act”. Therefore, the civil court wholly

erred in jurisdiction in granting such injunction, which order has correctly been set aside by the appellate court.

The injunction issued especially has to be termed as wholly erroneous further due to the fact that as per the respondents, about 90% of the work is already complete, in a project by which basic infrastructure is being laid by the respondents, in exercise of the authority given to them by virtue of the order dated 27.06.2011, issued in the name of the Governor of Punjab, by the competent authority, i.e. the State Government.

36. In conclusion therefore, it is held that the impugned order passed by the learned appellate court is fully justified and is therefore wholly sustainable, with the injunction granted by the trial court being wholly without jurisdiction even in terms of Section 145 of the Act, and further, the State Government having exercised jurisdiction under Section 164 and conferred power as it has vide the order dated 27.06.2011, on the respondent-Corporation, with such power overriding all other provisions of the Act, for the purpose of laying electricity lines or establishing plants and for transmission of electricity and telecommunications, the act of doing so by the Corporation, by issuance of the notifications dated July 25, 2014 and August 22, 2014 (published in the Government Gazettes of those dates and subsequently in two newspapers also each time), is wholly as per procedure, with only an error made in not publishing the names of the villages and prominent localities over which the lines are to pass, which error would also not entitle the petitioner to an injunction in his favour.

However, that procedural error, which is contrary to a part of condition no.2 in the order dated 27.06.2011, is also wholly rectifiable, with the competent authority directed to consider any objections even now filed by

the petitioner within a period of 15 days; with it further to be observed by this court that such objections are also eventually sustainable only if any *mala fide* action is shown to have been taken by the licensee; because once the powers under the Telegraph Act have been conferred upon the respondent corporation (licensee), which is almost an 'unabridged power' for the purpose of laying down infrastructure in the form of electricity transmission lines, the route for laying such lines to be assessed and followed, the objections can best be with regard to any *mala fides* alleged to be exercised.

Of course, if some *malafides* are shown, by a plaintiff, thereby rendering 'the action of the licensee' to be void or a wholly 'voidable one', perhaps an injunction against such malafide action could be issued in such specific circumstances, after hearing the licensee.

However, in the present case, the petitioners' allegations of *malafides* having been found to be wholly unsubstantiated and in fact a completely false allegation, the learned appellate court has not erred in reversing the order of the trial court.

On that aspect, to repeat yet again at the end of the judgment, the re-routing of the transmission line being only within the area and boundary of the food park referred to by the petitioner, with there being no re-routing outside such boundary, and therefore it not affecting the petitioner, his only attempt being that instead of over his land, the line should run over some other persons' private land, the allegation is found to be wholly and completely without any foundation.

37. Consequently, finding no merit in this petition, it is dismissed, but with a direction issued to the respondents to consider whatever objections the petitioner may raise within 15 days, by deciding such objections within

another period of one month thereafter, but with it made absolutely clear that there is no injunction operating even during the period within which such objections are to be decided, the petitioner always being entitled to apply for compensation in terms of clause (d) of the proviso to Section 10 of the Telegraph Act, 1885, which application, if made, would be dealt with wholly on its own merits, as already said.

38. To avoid such litigation in future, the respondents would be well advised to ensure that the names of the villages & localities over which a transmission line is to pass, are duly given in the notifications and publications to be made, (notifying any such schemes or projects to be undertaken), so as to ensure that objections can be raised by those affected, if they wish to, even in terms of condition no.(2) of the order dated June 27, 2011; though even on such objections filed, an injunction cannot be issued by a civil court, unless *mala fides* are shown to have been exercised, but after a hearing is given to a licensee with regard to such allegations of any *mala fide* exercise of power.

January 24, 2019
dinesh/nitin

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes
2. Whether reportable?	Yes