

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 01.02.2019

1. RSA No.3057 of 2015 (O&M)

Punjab State Electricity Board (now Punjab State
Power Corporation Ltd.) Patiala and others

..... Appellants

Versus

Gaurav Gupta and others

..... Respondents

2. RSA No.3958 of 2015 (O&M)

M/s Sport King Synthetic Ltd.

..... Appellant

Versus

Gaurav Gupta and others

..... Respondents

3. CR No.5443 of 2017 (O&M)

Punjab State Power Corporation Ltd. and others

..... Petitioners

Versus

Gaurav Gupta and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Naveen S. Bhardwaj, Advocate
for the appellants (in RSA-3057-2015).

Mr. M.L. Saggar, Sr. Advocate with
Mr. Armaan Saggar, Advocate
for the appellant (in RSA-3958-2015).

Ms. Rajni Gupta, Advocate
for the petitioners (in CR-5443-2017).

Mr. A.S. Virk, Advocate
for respondent No.1 (in RSA-3057 and 3958-2015).

Mr. Harsh Aggarwal, Advocate
for respondents No.3 and 4 (in RSA-3057-2015).
for respondents No.9 and 10 (in RSA-3958-2015).
for respondents No.3 and 4 (in CR-5443-2017).

Ms. Reeta Kohli, Sr. Advocate with
Mr. Rahul Sharma, Advocate
for respondents No.2 to 8 (in RSA-3958-2015).

ANIL KSHETARPAL, J.(ORAL)

Vide this judgment, I shall be disposing of two regular second appeals and one revision petition bearing RSA No.3057 of 2015, RSA No.3958 of 2015 and CR No.5443 of 2017 which are connected.

The limited issue which arises for consideration is “whether the First Appellate Court was correct in moulding the relief which would result into by passing the remedy provided under the statute.”

Plaintiff-respondent filed a suit for declaration challenging the notification dated 17.12.2004 issued under Section 28(3) of the Electricity Supply Act, 1948 proposing to start work of laying down transmission line by installing towers as also order dated 03.10.2005 officials of the Electricity Supply Company deciding the objections filed by the plaintiff as also declaration to the effect that no objection certificate given by the Additional Chief Administrator, Punjab Urban Development Authority to private defendant for extension of load is illegal, void and arbitrary. Further relief was prayed that defendants be directed to remove the towers illegally installed by them in the property of the plaintiff and his mother.

In short, the dispute is that the plaintiff and his mother is owner of 15 kanals and 4 marlas of the land comprised in Khata No.323/367 complete details given in the plaint. The electricity supply company i.e. at that time Punjab State Electricity Board, had proposed to take transmission line which is named as 66 KV single circuit line on double circuit tower with 220 KV sub-station Sahnewal to M/s Sport Kings Synthetic Limited, Ludhiana. For taking the transmission line, some part of the land was used

for installing towers. The plaintiff is aggrieved thereof and claims that the power supply company should be directed to remove the same. Both the Courts on appreciation of evidence have concurrently recorded that the plaintiff is not entitled to declaration with regard to challenge to the notification as well as the order passed. It has further been recorded that the plaintiff is also not entitled to declaration with regard to challenge to the order dated 30.10.2002 passed by the Additional Chief Administrator, Punjab Urban Development Authority as also mandatory injunction. However, learned First Appellate Court has moulded the relief and directed as under:-

“So, from the above said discussion and findings, this appeal is partly accepted and suit of the plaintiff is partly decreed in his favour and against the defendants No.1 to 8 for alternative relief to pay damages to the plaintiff for the actual loss suffered by him due to the installation of electric transmission line in question in the suit land for the supply of electricity to the concern of defendant No.8 as per the notification Ex.D-1 dated 17.12.2004 punished on 24.12.2004 and defendants No.1 to 8 are liable to pay compensation amount jointly and severally. Actual loss includes the loss to the value/price of the land of plaintiff measuring 15K-4M represented by Khata number 323/367, Khasra number 16//3/2, 4/1, 4/2, 5/1 and 5/2 situated in the area of Village Bilga, Tehsil and District Ludhiana as per Jamabandi for the year 1999-2000 or in the alternative to reinstall the transmission line in dispute as per the agreement Ex.P-9 dated 3.9.2005 at the expenses of defendant No.8 without payment of any compensation to plaintiff. The appeal for remaining reliefs stands dismissed. The parties are left to bear their own costs. Decree sheet be prepared. Learned lower Court record be returned back. Appeal file be consigned to the record room.”

The argument of learned counsel for the appellant is that under Section 42 of the Electricity (Supply) Act, 1948, the electricity supply company has power to place towers/poles and take wires for transmission and

distribution of the electricity. It is further submitted that Section 42 refers to the provisions of Telegraph Act, 1885 which lays down the method through which the compensation payable is assessed and if there is any dispute, such land owner who has suffered some damages, is entitled to get the aforesaid compensation determined. Section 42 of Electricity (Supply) Act, 1948 and Sections 10 and 16 of the Indian Telegraph Act, 1885 are extracted as under:-

“42. Powers to Board for placing wires, poles, etc.—

(1) Notwithstanding anything contained in sections 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910 (9 of 1910) but without prejudice to the requirements of section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, for the placing of any wires, poles, wall-brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Board, all the powers which the telegraph authority possesses under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Provided that where a sanctioned scheme does not make such provision as aforesaid, all the provisions of sections 12 to 19 of the first-mentioned Act shall apply to the works of the Board.

(2) A Generating Company may, for the placing of wires, poles, wall brackets, stays apparatus and appliances for the transmission of electricity, or for the transmission of telegraphic or telephonic communications necessary for the proper co-ordination of the works of the Generating Company, exercise all or any of the powers which the Board may exercise under sub-section (1) and subject to the conditions referred to therein.

Indian Telegraph Act, 1885

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—

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and

(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.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.—

(1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to

the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3), or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same.”

In the present case, it is apparent that the First Appellate Court rather than directing or relegating the parties to the remedy as provided under both the Acts has itself chosen to pass a decree which is again vague. The decree has been passed by saying that defendants No.1 to 8 are liable to pay compensation amount jointly and severally and actual loss would include the loss of the value of the price of the land measuring 15 kanals and 4 marlas i.e. the total holding of the plaintiff and his mother. The First Appellate Court has not recorded any finding as to how much land has been utilized and as to what extent the plaintiff and his mother have suffered on in installation of the towers and to what extent the damages have been suffered by the plaintiff and his mother. The requirement of the Act is to first assert the extent of damages suffered by the person whose land had been utilized either for installing tower

or for laying down the transmission line.

In view thereof, the appeal is allowed. The directions as noted above are set aside. The plaintiff-respondent and his mother would be entitled to resort to the remedy as provided under the Act.

There is an application for condonation of delay (CM-9681-C-2015 in RSA-3958-2015) which is strongly opposed by learned counsel for the plaintiff-respondent, however, once the judgment itself has been set aside above, in one appeal where delay has already been condoned vide order dated 02.05.2016, therefore, further deliberation on the application for condonation of delay would not be of any use. Accordingly, delay is condoned.

CM-18374-C-2018 in RSA-3958-2015

Application is dismissed as infructuous.

In view of setting aside the judgment and decree passed by the First Appellate Court dated 30.09.2014, the revision petition (CR No.5443 of 2017) which is arising out of the execution proceedings, is rendered infructuous.

All the pending miscellaneous applications in all cases, if any, shall stand disposed of in view of the above-said judgment.

Resultantly, RSA No.3057 and 3958 of 2015 are allowed whereas CR No.5443 of 2017 is dismissed as infructuous.

01.02.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No