

WPA 4557 of 2020
(Through Video Conference)

Rafiqul Islam Mullick @ Rarikul Islam Mullick & Ors.
Vs.
State of West Bengal & Ors.

Mr. Raj Mohan Chattoraj,
Mr. Lail Khatun
... For the petitioners.

Mr. Sumit Kumar Panja,
Mr. Sumit Kumar Roy
.... For the WBSETCL.

The petitioners claim to be the owners of the land over which a high tension line has been drawn by the West Bengal State Electricity Transmission Company Limited (in short, WBSEDTC), being the respondent no.11 in this writ petition. The petitioner says that the licensee has violated several provisions of law while drawing the high-tension line.

Be that as it may, the petitioners' grievance ventilated before this Court in a previous writ petition, being WP 7770(W) of 2019, was disposed of by an order dated 23rd April, 2019, directing the concerned District Magistrate to dispose of the writ petitioners' representation by a reasoned order within a period of three months from the date of communication of the said order. The District Magistrate, Hooghly, being the respondent no.7, by an order dated 26th July, 2019 has disposed of the

petitioners' representation by granting a sum of Rs.5,00,000/- for the sanding trees to the petitioners and other directions.

The petitioners being aggrieved by the order of the learned District Magistrate, filed a contempt petition, being CPAN 1127 of 2019 alleging that the order dated 26th July, 2019 passed by the learned District Magistrate, Hooghly, was not in accordance with the directions given by this Court in its order dated 23rd April, 2019. The petitioners were, however, given an opportunity to file appropriate proceedings to ventilate their grievances as against the order of the learned District Magistrate, Hooghly, dated 26th July, 2019 at the time when the contempt petition was dismissed on 6th January, 2020.

The petitioners say that there has been no survey of the petitioners' plot to ascertain the number and type of trees, which are there. The petitioners say, without such field survey the compensation could not have been arrived at. The compensation awarded, according to the petitioners, is without any basis and is much below the actual compensation which the petitioners should have received. The evidence given by the petitioner was also not considered by the learned Magistrate. The petitioners submit that no trees or saplings have been cut down or removed in the clearance belt of transmission line

till date and all the trees against which compensation has been asked for by the petitioners are in existence. The petitioners pray for setting aside of the order dated 26th July, 2019 and for ascertainment of compensation afresh, by the concerned District Magistrate, in accordance with the provisions of law. The petitioners submit that they have furnished a list of trees standing on their respective land and an assessment of value by the forest department. The petitioners also rely on a judgment referred to in **2007 (6) SCC, 792 (Kerala State Electricity Board vs. Livisha & Ors.)** for the purpose of ascertainment of compensation for the trees.

On behalf of WBSETCL it is submitted that no trees beneath the belt over which the high tension line has been drawn are required to be cut down permanently. The line is operational and the petitioners are only required to prune the trees so that the same does not reach the height of the line to create hindrance to the high tension supply.

On perusal of the order of the learned District Magistrate, Hooghly, dated 26th July, 2019, it appears at one place the learned District Magistrate is of the view that all trees and branches including saplings coming in the Row limit i.e., clearance belt of transmission line must be cut and removed. While in another portion of the order after ascertaining the

compensation, the learned District Magistrate held that in the event, the petitioners disagree to accept the compensation, the WBSETCL, should not cut any trees over the land of the petitioners and the petitioners in that event are required to prune the trees from time to time. The petitioners have not accepted the compensation or any part thereof. The WBSETCL, therefore, could not have cut or removed any of the trees. The trees are, therefor, is in existence at present.

The order of the learned District Magistrate is vague and does not dispose of the matter in unambiguous way. There are factual inconsistencies in the order when considered in the light of the submissions made by the parties. The language of the order has led to two further rounds of litigation, being the contempt petition and the instant writ petition. The State respondents remain unrepresented either on virtual mode or being physically present in Court and as such their versions are not available. The same is, however, not necessary to be considered in view of the order, I propose to pass.

The order of the learned District Magistrate dated 26th July, 2019 is not sustainable in law and is set aside. The learned District Magistrate, Hooghly, is directed to hold a field inquiry either by himself or

through any competent officer deputed on his behalf in the presence of the competent officers of the Directorate of Forest of the Divisional Forest office, having jurisdiction over the land of the petitioners and in the presence of the officials of the WBSETCL and the petitioners to ascertain which are the trees, which are required to be removed permanently and which are the trees which requires to be pruned only. In the field survey, the height, the nature of the trees and whether the same are fruits bearing or not have also to be noted down. The Forest Department, in terms of the field survey made in their presence shall give a tentative valuation of the trees which are required to be permanently removed and a tentative loss in respect of the trees which are required to be pruned. The Forest Department shall also furnish a report within a month from the date of the survey to the District Magistrate, Hooghly, with a copy to the petitioners and the WBSETCL. The learned District Magistrate, thereafter, by affording an opportunity of hearing to the petitioners, the WBSETCL and the State respondents shall pass a reasoned order, taking into consideration the relevant laws, including that for assessing the compensation in respect of the felling or pruning of trees. The field survey has to be conducted within a month from the date of communication of this order. The entire exercise

should be completed within a period of six months from the date of communication of the order.

The petitioners shall communicate a server copy of this order to the learned District Magistrate, Hooghly, being the respondent no.7 and all parties including the respondent no.7, shall act on a server copy of this order without insisting for a certified copy thereof.

Nothing further remains to be adjudicated in the writ petition, the same is accordingly disposed of.

Since I have not called for affidavits, the allegations contained in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Arindam Mukherjee, J.)