

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.353 of 2020

R.Kaveriammal

... Appellant/Petitioner

Vs.

1.The Superintending Engineer,
Palladam Electricity Distribution Circle,
Palladam, Tiruppur District.

2.The Executive Engineer,
Dharapuram Distribution,
Dharapuram.

3.The Assistant Engineer,
Dharapuram Electricity Distribution,
Kiramiyam, Dharapuram. Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 7.11.2019 made in W.P.No.31421 of 2019.

Prayer in W.P.No.31421 of 2019 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus of directing the Respondents to remove high voltage line passing through house site No. 69 situated at Old Survey No. 498 New Survey No. 526 Kavi Nagar one Dharapuram Tiruppur District.

For Appellant

: Mr.K.Sudhakar

For Respondents

: Ms.V.Janaranjani
for Mr.N.Damodaran

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard Mr.K.Sudhakar, learned counsel for the appellant. Ms.V.Janaranjani, learned counsel for the respondent for Mr.N.Damodaran, holding the brief, is present.

2. The contention raised by learned counsel for the appellant is that he purchased the land in the year 1997 and the electricity towers/poles were existing over the land, for which neither compensation was paid to his predecessor-in-interest nor any appropriate steps were taken by the respondents under the Indian Telegraph Act, 1885 (in short, "the 1885 Act") in this regard.

3. The appellant moved an application for shifting of the lines, which was allowed by the order dated 31.8.2019.

4. The respondents demanded expenses that were to be borne for shifting of the said lines, that came to be challenged in the writ petition giving rise to the present appeal relying on a Division Bench judgment in the case of The Superintending Engineer, TNEB, Maharaja Nagar, Tirunelveli and another v. M.Sengu Vijay and another, decided on 22.2.2011 in W.A.(MD) No.932 of 2010 to substantiate his submissions.

5. Learned counsel for the appellant contends that in the said judgment under almost similar facts, it has been held in view of the provisions of Section 10(d) read with Section 17 (1) of the 1885 Act, the appellant has no legal obligation to make any such payment and the Electricity Board is bound to remove the poles at its own expenses. For this, the learned counsel for the appellant submits that he has moved a detailed representation and has then approached this Court by filing a writ petition.

6. The learned Single Judge has held that on the face of the documents as existing, it is admitted that the appellant had purchased the property on 20.10.1997 and the high tension power lines had already been laid much prior to that. In such circumstance, the appellant would not be entitled to any compensation and the only option available to the appellant is re-alignment, hence, a mandamus as prayed for could not be issued.

7. We find that the crux of the dispute is with regard to bearing of the expenses for re-alignment of the poles, which the

appellant contends that he is not liable to pay in the light of the judgment, which he has relied on.

8. We find that the poles had been laid much prior to the purchase of the property by the appellant. There is no material on record to indicate that the predecessor-in-interest of the appellant/vendor had ever taken any objection or had raised any request in this regard for re-alignment and therefore, the lines came to be laid, for which the presumption can be drawn, with the consent of the then owner. This will amount to acquiescence on the then owner and he having not raised any such plea, the subsequent purchaser, who has purchased the land as per the sale deed for a sum of Rs.5400/- only, cannot be heard to say that he will not bear the expenses for re-alignment.

9. The judgment which has been relied on by learned counsel for the appellant is not in relation to such transaction as involved in the present case and therefore, the ratio thereof, cannot be applied, keeping in view the facts of the present case.

The appeal, therefore, has no merits and is accordingly, rejected. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

- 1.The Superintending Engineer,
Palladam Electricity Distribution Circle,
Palladam, Tiruppur District.
- 2.The Executive Engineer,
Dharapuram Distribution,
Dharapuram.
- 3.The Assistant Engineer,
Dharapuram Electricity Distribution,
Kiramiyam, Dharapuram.

W.A.No.353 of 2020

KK (CO)
GMY (28/10/2020)