

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2020

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. Nos. 7010 & 7011 of 2020
and
W.M.P. Nos. 8360 & 8362 of 2020

Ganesan ... Petitioner in W.P. No. 7010 of 2020

Ashok Kumar Petitioner in W.P. No. 7011 of 2020

Vs.

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2. The Senior Deputy General Manager,
Power Grid Corporation of India Limited,
No.1278/A, Ganapathy Street,
Thendral Nagar,
Tiruvannamalai.

3. The Revenue Divisional Officer,
Tiruvannamalai Revenue Division,
Tiruvannamalai.

4. The Tahsildar,
Tiruvannamalai Taluk,
Tiruvannamalai Town.

... Respondents in both W.P's

PRAYER : Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in his proceedings in Na.Ka.No.M1/23059/2019 dated 03.02.2020 and Na.Ka.No.M1/28685/2019 dated 03.01.2020, respectively and quash the same.

For Petitioners : Mr. B.Jawahar
[in both W.P's]

For Respondents 1,3 & 4 : Mr. G.Rajesh
[in both W.P's] Government Advocate

For Respondent 2 : Mr. Jayesh B.Dolia
[in both W.P's] for M/s. Aiyar & Dolia

C O M M O N O R D E R

These Writ Petitions have been filed challenging the proceedings of the first respondent dated 03.02.2020 and 03.01.2020, permitting the second respondent and others to enter upon the properties of the petitioner in order to install the electricity tower.

2. The main ground that has been raised in these Writ Petitions are that the first respondent does not have power or jurisdiction to pass such an order under Section 16(1) of Indian Telegraph Act, 1885.

3. The issue that has been raised in these present Writ Petitions are squarely covered by the judgment of this Court in W.P. (MD) No. 8844 of 2011 & M.P. (MD) Nos.1 to 3 of 2011 reported in 2012(1) CTC 504. The relevant portions of the judgment is extracted hereunder:

"31. Once it is found that Section 12(2) of the 1910 Act stands repealed in terms of Section 185(2) (b) of the 2003 Act, after the issue of the Works of Licensees Rules, 2006 under Section 67 (1) of the 2003 Act, the question that arises next for consideration is about the procedure to be followed under the 2003 Act, whenever the licensees seek to erect electric poles, towers and lines on private lands.

32. As pointed out above, Section 67(1)(d) and (f) authorise a licensee (a person who is granted a license under Section 14 to transmit or distribute or trade in electricity) to lay down and place electric lines, electrical plants and other works and to do all other acts necessary for transmission or supply of electricity. By virtue of Section 67(2)(a) to (d), the appropriate Government is entitled to frame rules specifying (i) the cases and circumstances in which the consent in writing of the owner or occupier is required for carrying out works (ii) the authority to grant permission to carry out works, when the owner or occupier objects (iii) the nature and period of notice to be given by the licensee before carrying out works and (iv) the procedure and manner of consideration of objections and suggestions.

33. Therefore, it is clear that prima facie the licensee has the power to lay down and place electrical

lines and other works in any place within the area of supply or transmission. However, this power can be circumscribed only by the rules framed by the appropriate Government in terms of subsection (2).

34. As we have seen earlier, the Central Government had issued the Works of Licensees Rules, 2006 with effect from 18.4.2006. Rule 3(1) empowers the licensee, with the prior consent of the owner or occupier of any building or land, to 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 work has not already been lawfully laid down or placed by such licensee. The first proviso to Rule 3 (1) states that in case the owner or occupier raises objections, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other Officer authorised by the State Government in this behalf. The *R.Santhana Raj vs The Chief Engineer* on 8 November, 2011 second proviso to Rule 3(1) provides a remedy to the owner or occupier of the building, on whose lands, any works have been carried out. Under this proviso, if the owner or occupier shows sufficient cause, the District Magistrate or the Commissioner of Police may direct any such works, support, stay or strut to be removed or altered.

35. Thus it is clear from Rule 3 (1) of the 2006 Rules that despite the repeal of Section 12(2) of the 1910 Act, by the 2003 Act, the requirement of prior consent is introduced under the Rules issued in exercise of the power conferred by Section 67(2). As a matter of fact, Section 12 (2) of the 1910 Act spoke only about consent and not about prior consent. But Rule 3 (1) of the Works of Licensees Rules, 2006 speaks of prior consent. The new addition under the 2006 Rules is that the District magistrate or the Commissioner of Police is empowered to overrule the objections of the owner or occupier and permit the licensee to carry out the works. Another addition is that the owner or occupier also has a remedy, even after the laying down of the poles, overhead lines etc., to move the District Magistrate or Commissioner of Police to remove or alter such poles or lines.

36. But unfortunately, sub rule (4) of Rule 3 makes it clear that nothing contained in this Rule shall affect the powers conferred upon any licensee

under Section 164 of the Act. Therefore, the requirement of prior consent of the owner or occupier of the land, prescribed under Rule 3(1)(a) of the Works of Licensees Rules 2006, is subject to the powers, if any conferred upon the licensee under Section 164.

37. Under Section 164 of the 2003 Act, the appropriate Government may confer upon any Public Officer, Licensee or any person engaged in the business of supplying electricity, any of the powers possessed by the telegraph authority under the Indian Telegraph Act 1885, for the purpose of placing electric lines or electric plant for the transmission of electricity.

38. Section 10 of the Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. Section 11 of the Act empowers the Telegraph Authority to enter upon any property for the purpose of examining, repairing, altering or removing any telegraph line or post. Under Section 16 (1), the District Magistrate is empowered to pass an order permitting the telegraph authority to exercise the powers conferred by Section 10, if there is any resistance or obstruction from anyone, for the exercise of the powers by the Telegraph Authority under Section 10. Sub-sections (3) and (4) of Section 16 provides for resolution of disputes with regard to the compensation payable for the damage caused to the property, by the telegraph authority while exercising powers under Section 10.

39. It will be relevant to note that the first proviso to Rule 3(1) and Rule 3(2) of the Works of Licensees Rules 2006, have resemblance to the provisions of Section 16 (1) to (3) of the Telegraph Act, 1885. The first proviso to Rule 3(1) of the Works of Licensees Rules 2006 as well as Section 16 (1) of the Telegraph Act, 1885 resemble each other, in the sense that both speak of removal of obstruction or resistance by the owner or occupier. Similarly, Rule 3 (2) of the said Rules and Section 16(3) of the 1885 Act, speak of determination of compensation. R.Santhana Raj vs The Chief Engineer on 8 November, 2011.

40. A combined reading of Section 67 (2) (a) to (d) of the 2003 Act together with (I) Rule 3 (1) and 3 (4) of the Works of Licensees Rules 2006 (II) Section 164 of the 2003 Act and (III) Sections 10 and 16 of the Telegraph Act, 1885, would lead us to the following

conclusions:-

(i) In normal circumstances, the licensee would require the prior consent of the owner or occupier of any land, by virtue of Rule 3(1)(a) of the Works of Licensees Rules 2006, read with Section 67 (2)(a) to (d) of the Electricity Act 2003.

(ii) But if the appropriate Government has, in terms of Section 164 of the 2003 Act, by order in writing, conferred upon any Public Officer or licensee, the powers of a telegraph Authority under the Indian Telegraph Act, 1885, for placing of electric lines or electric plant, then the requirement of prior consent under Rule 3(1)(a) need not be complied with. This is in view of Rule 3(4) of the Works of Licensees Rules 2006.

(iii) In other words, if the appropriate Government had passed an order empowering the licensee to exercise any of the powers conferred by the Telegraph Act, 1885, then the licensee can invoke Sections 10 and 11 of the Telegraph Act, 1885 and simply enter upon any private land and carry out necessary works, without the prior consent of the owner. But if the appropriate Government had not passed any order in terms of Section 164 of the Electricity Act, 2003 conferring such a power upon the licensee, to exercise any power under the Telegraph Act, then the licensee has to obtain prior consent of the owner or occupier, as per Rule 3(1)(a) of the Works of Licensees Rules 2006 to carry out the works.

41. Therefore, the answer to the question as to whether the prior consent of the owner is necessary before erecting poles, towers or supply lines, on a private land, depends upon whether the appropriate Government had conferred powers upon the licensee, under Section 164 of the Electricity Act, 2003 or not.

42. To find an answer to the above question, we may have to go back once again to the Electricity Act, 1910. Section 51 of the 1910 Act stipulated that notwithstanding anything contained in Sections 12 to 16 and 18 and 19, the appropriate Government may by order in writing, confer upon any Public Officer, Central/State Transmission Utility, Licensee, Transmission Licensee or any person engaged in the business of transmission, any of the powers of the Telegraph Authority under the Telegraph Act, 1885. As a matter of fact, Section 51 of the 1910 Act is in pari

materia with Section 164 of the 2003 Act, with only a slight modification. While Section 51 of the 1910 Act refers to Central Government in the case of Inter State Transmission and the State Governments in the case of Intra State Transmission, Section 164 of the 2003 Act refers only to "Appropriate Government". Additionally, Section 51 of the 1910 Act, speaks of electric supply lines, appliances and apparatus for transmission of energy. But Section 164 of the 2003 Act speaks of electric lines or electrical plant for the transmission of electricity. Except this, the provisions of both are almost identical.

43. It is seen from para 4 of the Board proceedings of the Tamil Nadu Electricity Board in Permanent B.P.(CH) No.368, Technical Branch, dated 25.8.2010, that the appropriate Government had already conferred powers upon the Electricity Board to exercise the powers of the Telegraph R.Santhana Raj vs The Chief Engineer on 8 November, 2011 Authority under the Telegraph Act, 1885. This conferment had been made by the Government, in terms of Section 51 of the Electricity Act, 1910, much before the 2003 Act was issued. This conferment made under Section 51 of the 1910 Act should be deemed to be a conferment under the corresponding provision of the 2003 Act, namely Section 164, since it is not inconsistent with any of the provisions of the 2003 Act. This is in view of Section 185(2)(a) of the Electricity Act, 2003. Under Section 185 (2)(a) of the 2003 Act, any notification, declaration or authorisation made under the repealed enactments would be deemed to have been done under the corresponding provision of the 2003 Act, if it is not inconsistent with the 2003 Act. Since the power of the appropriate Government under Section 51 of the 1910 Act, to empower a licensee to exercise the powers of the Telegraph Authority, is retained in tact, under Section 164 of the 2003 Act, there is no inconsistency. Therefore, the only condition prescribed in Section 185(2)(a), namely that the act done in terms of the previous enactment should not be inconsistent with the provisions of the new Act, is also satisfied. Hence, the power conferred upon the TNEB by the State Government under Section 51 of the 1910 Act, is deemed to be the power conferred under the corresponding provision of the new Act viz., Section 164.

44. Thus it is clear that the respondents have been conferred with the powers exercisable by the

Telegraph Authority in terms of Section 10 of the Telegraph Act, 1885. Therefore, Rule 3 (4) of the Works of Licensees Rules 2006, would come into play in the case on hand. Consequently, the requirement of prior consent of the owner or occupier, prescribed under Rule 3(1)(a) of these Rules will not affect the powers deemed to be conferred upon the respondents under Section 164 of the 2003 Act, by virtue of Section 185 (2)(a) of the 2003 Act read with Section 51 of the 1910 Act.

45. Though the statutory provisions themselves are very clear and they do not give any scope for any interpretation by any Court, let me also consider, for the sake of completion of narration, the decisions relied upon by the learned counsel on both sides.

46. In the first decision relied upon by the learned counsel {BHEL vs. TNEB}, R.Banumathi, J., was concerned with a case where the writ petitioner-BHEL objected to the grant of electricity service connection to a Church on the ground that the land on which the Church had been constructed, belonged to BHEL. While it was the contention of BHEL that their consent was necessary in view of Section 12(2) of the 1910 Act, it was the contention of the Board and the Church that the requirement of consent had been dispensed with, by Section 42 (1) of the 1948 Act. But the learned Judge held that Section 42 of the 1948 Act can be invoked only in cases where there is a sanctioned scheme and that it cannot be invoked for erection of poles for extending supply for domestic or commercial use. Following the decision of the Orissa High Court in Orissa State Electricity Board vs. Pyari Mohan Pattnaick {AIR 1978 Ori. 190} and the decision of T.Meenakumari, J., in Kannappan vs. Commissioner {1999 (3) MLJ 235}, the learned Judge held in BHEL vs. TNEB that the requirement of Section 12(2) of the 1910 Act cannot be circumvented through Section 42 of the 1948 Act.

47. But in BHEL vs. TNEB, this Court did not consider, unfortunately, either Section 185 (2)(b) or Sections 67 to 69 of the 2003 Act or even the Works of Licensees Rules 2006, issued in exercise of the powers conferred by Section 67(2) of the 2003 Act. Apart from the fact that the repeal and savings provision contained in the 2003 Act, was not considered by the learned Judge in BHEL vs. R.Santhana Raj vs The Chief Engineer on 8 November, 2011 TNEB, the said decision in

any case, cannot be pressed into service, by the petitioner herein. This is in view of the fact that the said case arose much before the enactment of 2003 Act. Therefore, the reliance placed by Mr.S.Meenakshisundaram, learned counsel for the petitioner, on the said decision, is of no avail.

48. In the next decision viz., Superintending Engineer vs. M.Sengu Vijay, the question that arose for consideration before the Division Bench was entirely different. In that case, a property in which electrical poles and lines had been erected long time ago, was developed into a layout of house sites by the subsequent purchaser. For the approval of the layout, the Director of Town and Country Planning imposed a condition that the poles and lines had to be shifted along the road, formed by the promoter in the layout. When the promoter of the layout made a request to the Electricity Board, the Board demanded a sum of Rs.6 lakhs towards expenses for shifting. Therefore, the promoter of the layout filed a writ petition seeking a Mandamus directing the Board to remove the electric poles and service lines. The writ petition was allowed and the Board preferred an appeal. The only question that arose before the Division Bench, as seen from para 6 of the judgment, is as to whether the Board was right in insisting the first respondent to pay the expenses for shifting the electric poles and lines. While answering the said question, the Division Bench relied upon Section 12 (2) of the 1910 Act.

49. In view of the fact that the question that arose for consideration in that decision of the Division Bench was different and also in view of the fact that the express provisions of the 2003 enactment were not taken into account, the said decision of the Division Bench will also not go to the rescue of the petitioner. Moreover, it was found on facts by the Division Bench in that decision, that neither the consent of the owners was obtained nor any compensation was paid to the owners. Apart from this fact, it was recorded in para 7 of the judgment that the poles had been erected 22 years ago, when the 2003 Act had not come into existence. Therefore, the petitioner cannot take refuge in the said decision.

50. In R.Kannan {2008 (4) MLJ 892} relied upon by the Standing Counsel for the Board, this Court was dealing with a case where the District Magistrate gave

opportunity of hearing to the land owner and the licensee and passed an order overruling the objections of the land owner and permitting the licensee to carry on the work, in terms of Section 16 (1) and (2) of the Telegraph Act, 1885. In the case on hand, the objections or resistance of the writ petition, had not been taken up with the District Magistrate, in terms of Section 16(1) of the Telegraph Act, 1885. Therefore, the said decision is of no avail to the respondents. Similarly, the decision in T.Narayanan {2008 (4) MLJ 1024}, also arose out of an order passed by the District Magistrate in terms of Section 16(1) of the Telegraph Act, 1885.

51. The decision of the Supreme Court in Daulat Singh Surana {2007 (1) SCC 641}, arose out of the proceedings under the Land Acquisition Act, 1894. Therefore, the principles enunciated therein cannot be applied to a case arising under the Electricity Act, 2003 read with Telegraph Act, 1885, where no acquisition of land takes place. In cases arising under the Land Acquisition Act, 1894, the Constitutional (not fundamental) right to property, guaranteed under Article 300-A, is sought to be infringed by procedure established by law. But in cases arising under the Electricity Act and R.Santhana Raj vs The Chief Engineer on 8 November, 2011 Telegraph Act, a right to enter into somebody else's property is conferred by statute, upon licensees, for a limited purpose. Therefore, the question in this case is whether consent is necessary or not.

52. The unreported decision in E.Mary Marthal vs. The Superintending Engineer dated 18.3.2010 in W.P.(MD) No.1247 of 2010, relied upon by the learned Standing Counsel, is actually in favour of the petitioner. It is held by R.S.Ramanathan, J., in the said decision that where there is obstruction or resistance, by the land owner, the respondents should obtain permission from the District Magistrate for carrying out the works.

53. In the unreported decision of the Division Bench in Tony Abraham vs. The Superintending Engineer dated 5.9.2011 in W.A.(MD) No.521 of 2011, the Division Bench quoted with approval, the following principles enunciated in another decision in W.P.No.18967 of 2009 (Dr.M.Ponnuswamy vs. The Chairman):- "(1) No notice is necessary to the land owners for laying high tension wire in their land.

(2) The permission of the land owners for laying high tension wire over and above the land of the petitioners is not necessary and Section 10 and Section 16 of the Telegraphic Act does not contemplate so.

(3) Such permission is required only in respect of the land owned by the local authorities.

(4) A mere objection by the land owner does not require authorities to seek permission from the District Magistrate concerned. (5) Only if there is an obstruction or resistance by land owners such permission is necessary."

54. But in *T.Narayanan vs. Power Grid Corporation India Ltd* {W.P.No.49172 of 2006 decided on 18.1.2007}, Prabha Sridevan, J., held in paragraph-20 that when there are objections to the laying of lines or the erection of transmission towers, the Corporation was bound to get the permission of the District Magistrate. In paragraph 21 of the said decision, the learned Judge held "we have already seen that the objections need not be in a particular form; even a protest can be termed as an objection. The very fact that all these writ petitioners have come to Court seeking Mandamus shows that they are protesting against the project of the Corporation".

55. Though the learned Judge who decided *Dr.M.Ponnuswamy*, referred to the decision of Prabha Sridevan, J., in *T.Narayanan*, the learned Judge nevertheless held that a mere objection does not require the authorities to seek permission from the District Magistrate concerned, in terms of Section 16 of the Telegraph Act. He held that something more than a mere objection was required, to make it a case of obstruction/resistance. In other words, the learned Judge who decided *Dr.M.Ponnuswamy*, actually took a view which was diametrically opposite to the view expressed by Prabha Sridevan, J., in *T.Narayanan*. For taking such a view, the learned Judge drew a distinction in paragraph 6.3 of his decision (in *Dr.M.Ponnuswamy*) between the words "objection" and "obstruction/resistance" appearing in Section 16(1) of the Telegraph Act, 1885. However, an exercise into semantics was not undertaken by the learned Judge. Therefore, let us now see whether an objection would tantamount to obstruction/resistance. *R.Santhana Raj vs The Chief Engineer* on 8 November, 2011

56. The words "obstruction" and "resistance" are used together, not only in Section 16(1) of the Telegraph Act, 1885, but also in several enactments including Order XXI, Rule 97 of the Code of Civil Procedure, 1908 as well as in Section 225 of the Indian Penal Code, 1860. Even under Order XXI, Rule 97 of the Code, it is left to the decree holder to file an application before the Executing Court, whenever his attempt at obtaining possession of a property is resisted or obstructed by anyone. This is similar to the prescription contained in Section 16 (1) of the Telegraph Act, 1885, which makes only the Telegraph Authority liable to seek an order from the District Magistrate, if there is obstruction or resistance.

57. If understood in the context of the very same expressions used in Order XXI, Rule 97 of the Code, it will be clear that there need not be an actual physical scuffle or a dharna in front of the land, to constitute an obstruction/resistance. While dealing with the meaning of the expression "obstruction" appearing in Section 133 of the Customs Act, 1962, the Supreme Court pointed out in C.C.E. vs. Paradip Port Trust {1990 (4) SCC 250} the following:-

"On the authority of Hinchliffe vs. Sheldon {1955 (1) W.L.R. 1207}, it can be said that obstruction is not confined to physical obstruction and it includes anything which makes it more difficult for the police or the public servant to carry out their duties". In the same decision, the Supreme Court relied upon an earlier decision in Santosh Kumar vs. State {AIR 1951 SC 201} to conclude that even an order of seizure would amount to obstruction. Therefore, obstruction/resistance need not necessarily be a violent or non-violent physical act. It is always construed as a defensive act. As a matter of fact, the first proviso to sub-rule (1) of Rule 3 of Works of Licensees Rules 2006, makes it incumbent upon the licensee to seek the permission of the District Magistrate, when the owner objects. The expression used in the said provision is only "objection".

58. Therefore, in the light of the foregoing discussion, the following conclusions emerge:-

(i) The provision of Section 12(2) of the Electricity Act, 1910, requiring the licensee to obtain consent of the owner or occupier of the land on which

it is proposed to carry out certain works, stands repealed, in terms of Section 185 (1) and 185 (2) (b) of the Electricity Act, 2003, with the issue of the Works of Licensees Rules, 2006, in exercise of the power conferred by Section 67 (2) of the 2003 Act.

(ii) Primarily, Rule 3(1)(a) the Works of Licensees Rules, 2006 requires the licensee to obtain the prior consent of the owner or occupier of any building or land on which it is proposed to carry out certain works.

(iii) If the owner or occupier refuses to give consent and raises objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police, in terms of the first proviso under Rule 3(1). R.Santhana Raj vs The Chief Engineer on 8 November, 2011

(iv) But in cases where powers are conferred upon the licensee under Section 164 of the Electricity Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply. In other words, where the appropriate Government had conferred upon the licensee, the powers of a Telegraph Authority under the Telegraph Act, 1885, the licensee need not take recourse to the procedure prescribed by Rules 3(1) to (3) of the Works of Licensees Rules, 2006. But the licensee shall take recourse to the provisions of the Telegraph Act, 1885.

(v) Since Section 164 of the 2003 Act, corresponds to Section 51 of the 1910 Act, the power conferred by the Government upon a licensee, in terms of Section 51 of the 1910 Act, is saved by Section 185(2)(a) of the 2003 Act. Therefore, the power conferred upon the Tamil Nadu Electricity Board by the Government of Tamil Nadu under Section 51 of the 1910 Act, could continue to be exercised by the Board, as though those powers were conferred under Section 164 of the 2003 Act.

(vi) Section 10 of the Telegraph Act, 1885, does not contemplate "consent" or "permission" of the owner or occupier of a property, for the purpose of placing and maintaining a supply line, under, over, along or across and posts in or upon any immovable property. The only case where Section 10 contemplates permission is in respect of a property vested in or under the control or management of any local authority.

(vii) Though Section 10 of the Telegraph Act, 1885, does not make it incumbent upon the licensee to

obtain permission of the owner or occupier, it does not also reduce his ownership or right of possession into something farcical. The right of the owner or occupier to resist or obstruct any act undertaken under Section 10, is recognized indirectly in Section 16(1), which requires the licensee to obtain an order of the District Magistrate, in such circumstances. A careful reading of Section 16(1) would show two things viz.,

(a) that the District Magistrate exercises his power under this Section, in his discretion and (b) that what the District Magistrate does under Section 16 (1) is akin to the removal of obstruction as ordered by an Executing Court in terms of Order XXI, Rules 97 and 98 of the Code. Any resistance on the part of the owner or occupier after an order is passed by the District Magistrate becomes a punishable offence under Section 188 of the Indian Penal Code, by virtue of Section 16 (2) of the Telegraph Act, 1885.

(viii) The words "resisted or obstructed" appearing in Section 16(1) of the Telegraph Act, 1885 have to be given their ordinary meaning. They have to be understood as defensive acts as pointed out by the Apex Court in Santosh Kumar (cited supra). Actual physical acts of omission and commission at site or on the spot, is not necessary to constitute resistance or obstruction, as held by the Supreme Court in C.C.E. vs. Paradip Port Trust. The method of resistance/obstruction adopted by people, vary from person to person depending upon their status, level of education, mental orientation and social upbringing. Therefore, any kind of objection or protest by the land owner would tantamount to obstruction/ resistance. Such an interpretation is necessary in view of the fact that the Telegraph Act is a colonial Act of pre-Constitutional days, which came to be adapted after the Constitution and which has come to be borrowed by the Electricity Act, 2003 to interfere and infringe upon the right of owners of private property to their unhindered enjoyment. The Supreme Court pointed out in Dev R.Santhana Raj vs The Chief Engineer on 8 November, 2011 Sharan vs. State of U.P. {2011 (4) SCC 769} that even the Land Acquisition Act, 1894, is "a pre-constitutional legislation of colonial vintage and is a drastic law, expropriatory in nature". Therefore, any interpretation to such enactments should conform to the Constitutional goals and rights. Despite the fact that the right to property is no more a fundamental right after the 44th Amendment to the Constitution, it is nevertheless a constitutional right under Article 300-

A. In several decisions, the Supreme Court has held that to hold property is not only a Constitutional right but also a human right. {see Lachhman Dass vs. Jagat Ram {2007 (10) SCC 448}, Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel {2008 (4) SCC 649}, N.Padmamma vs. S.Ramakrishna Reddy {2008 (15) SCC 517}, Chandigarh Housing Board vs. Major General Devinder Singh {2007 (9) SCC 67}. Therefore, a dignified protest, even in the form of a formal letter, notice or telegram, would amount to obstruction within the meaning of Section 16(1) of the Telegraph Act, 1885. Once such a protest is lodged, the licensee should seek an order from the District Magistrate."

4. It is clear from the above judgment that though Section 10 of Indian Telegraph Act, 1885, does not make it incumbent upon the licensee to obtain permission of owner or occupier. The right of owner or occupier to resist or obstruct any act undertaken under Section 10, is recognized indirectly under Section 16(1) of Indian Telegraph Act, 1885, which requires the licensee to obtain an order of the District Magistrate. The jurisdiction and power of the District Magistrate is thus confined under Section 16(1) of the Indian Telegraph Act, 1885. The District Magistrate considers the objection made by the owner or occupier of the property and thereafter, passes appropriate orders. This judgment has been followed consistently. Therefore, the issue that has been raised by the petitioners in these Writ Petitions is no longer res integra.

5. In view of the above, this Court does not find any merits in the above Writ Petitions and accordingly, the same is dismissed. It is always left open to the petitioners to workout their remedy, in so far as, the compensation is concerned in accordance with law. No costs. Consequently, the miscellaneous petitions are closed.

सत्यमेव जयते Sd/-

Assistant Registrar

//True Copy//

WEB COPY Sub Assistant Registrar

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To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.

2. The Senior Deputy General Manager,
Power Grid Corporation of India Limited,
No.1278/A, Ganapathy Street,
Thendral Nagar,
Tiruvannamali.
3. The Revenue Divisional Officer,
Tiruvannamalai Revenue Division,
Tiruvannamalai.
4. The Tahsildar,
Tiruvannamalai Taluk,
Tiruvannamalai Town.

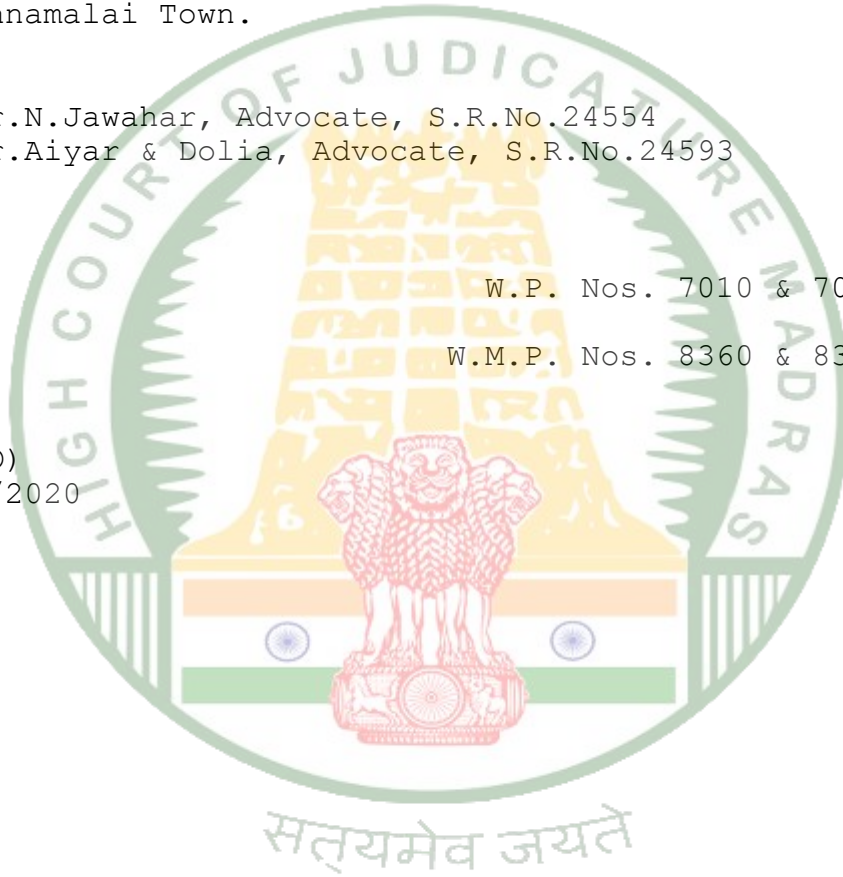
+1cc to Mr.N.Jawahar, Advocate, S.R.No.24554

+1cc to Mr.Aiyar & Dolia, Advocate, S.R.No.24593

W.P. Nos. 7010 & 7011 of 2020
and

W.M.P. Nos. 8360 & 8362 of 2020

VSN II (CO)
KKV/17/07/2020



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