

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.09.2020

Delivered on: 24.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.Nos.11345, 11991, 12414 & 12722 of 2020

&

WMP.Nos.13838, 14724, 15748, 15307 & 15718 of 2020

C.Selvi

..petitioner in
WP.No.11345/2020

.vs.

1.The Chairman/Managing Director
Tamil Nadu General and
Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
No. 144, Anna Salai, Chennai -2.

2.The Chief Engineer
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, Eastern Wing,
Chennai - 2.

3.The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Koluman Road,
Udumalpet - 642 126,
Tirupur District.

4.The District Collector,
Thiruppur District.

5.The Block Development Officer,
Special Officer, Kanivaadi,
Panchayat Union,
Kannivadi Village,
Dharapuram Taluk, Tiruppur District.

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6.Spring Renewable Energy Pvt. Ltd.
Nordex india Pvt, Ltd,
2nd Floor, Prestige Fenerald
Ashok Nagar, Bangalore.

7.The General Manager,
K.S Infrastructure,
Balakumar Nagar,
Nanchaithalaiyur Post,
Dharapuram Taluk,
Thiruppur District.

... Respondents
in WP.No.11345/2020

Prayer in W.P.No.11345/2020 :- Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of mandamus directing the 1 to 5 respondents forbearing the 6th and 7th respondents from erecting poles to draw 230 KV Low Tension wire over the petitioner Patta lands situated at Kannivadi Village, Dharauram Taluk, Tiruppur District for the Survey No.618/1 without giving any notice or seeking consent from the petitioner for such usage of petitioner Patta lands.

For Petitioner : Mr.M.Vijayan
(in All WPs) for Mr. Karan and Uday
For Respondents : Mr.N.Damodaran for R 1 to R 3
(in W.P.No.11345/2020)
Mr.Annai Ezhil for R 4 & 5
Government Advocate
Mr.Dwarakesh Prabhakaran for R 6
Mrs.Kanimozhi Mathi for R 7

C. Ponnathal

..Petitioner
in W.P.No.11991/2020

.vs.
सत्यमेव जयते

1.The Chairman/Managing Director
Tamil Nadu General and
Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
No. 144, Anna Salai, Chennai -- 2.

2.The Chief Engineer
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, Eastern Wing,
Chennai - 2.

3.The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Koluman Road,
Udumalpet - 642 126,
Tirupur District.

4.The District Collector,
Thiruppur District.

5.Spring Renewable Energy Pvt. Ltd.
001, Level G.Pentagon P.S.
Magarpatta City, Hadapsar,
Pune - 411 013.

6.The General Manager,
K.S Infrastructure,
Balakumar Nagar,
Nanchathalaiyur Post,
Dharapuram Taluk,
Thiruppur District.

... Respondents
in WP.No.11345/2020

Prayer in W.P.No.119912020 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing he 1 to 4 respondents forbearing the 5th and 6th respondents from drawing Over head Low Tension Wires or Cable in the petitioner Patta land situatd at Kadhakottai Village, Dharmapuram Taluk, Tiruppur District for Survey No.618/2, 615, 616, 616/2, 611/B from the adjacent land in S.No.600/3, 609, 614, 618/1, 599Kadhakottai Village, Dharaauram Taluk, Tiruppur District or from another place without giving any notice or seeking consent from the petitioner for such usage of petitioner Patta lands.

For Petitioner : Mr.M.Vijayan
(in All WPs) for Mr. Karan and Uday

For Respondents : Mr.Vijay Mehnath for R 1 to R 3
(in W.P.No.11991/2020) Standing Counsel
Mr.K.Parameshwaran for R 4
Government Advocate
Mr.Dwarakesh Prabhakaran for R 5
Mrs.Kanimozhi Mathi for R 6

N.Ramadurai

..Petitioner in
WP.No.12414/2020

.Vs.

1.The Chairman/Managing Director
Tamil Nadu General and
Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
No. 144, Anna Salai, Chennai -- 2.

2.The Chief Engineer
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, Eastern Wing,
Chennai - 2.

3.The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Koluman Road,
Udumalpet - 642 126,
Tirupur District.

4.The District Collector,
Thiruppur District.

5.Spring Renewable Energy Pvt. Ltd.
Rep.by its Managing Director,
001, Level G.Pentagon P.S.
Magarpatta City, Hadapsar,
Pune - 411 031,

6.The General Manager,
K.S Wind & Renewable India Pvt,Ltd,
Balakumar Nagar,
Nanchaithalaiyur Post,
Dharapuram Taluk,
Thiruppur District.

... Respondents

in WP.No.12414/2020

Prayer in W.P.No.12414/2020 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing he 1 to 4 respondents forbearing the 5th and 6th respondents from erecting poles to draw 230 KV Low Tension wire over the petitioner Patta lands situated at Monganallampalayam, Erachapadi Post, Dharapuram Taluk, Tiruppur

District for the Survey
No.424.A,424/B,448/C,449,419,420/1,417/2,418/4,617 without
giving any notice or seeking consent from the petitioner for
such usage of petitioner Patta lands.

For Petitioner : Mr.M.Vijayan
(in All WPs) for Mr. Karan and Uday

For Respondents :Mr.Vijay Mehnath for R 1 to R 3
(in W.P.No.12414/2020) Standing Counsel
Mr.Mani Gopi for R 4
Government Advocate
Mr.Dwarakesh Prabhakaran for R 5
Mrs.Kanimozhi Mathi for R 6

S.Subramaniyam ..petitioner in
WP.No.12722/2020

.vs.

1.The Chairman/Managing Director
Tamil Nadu General and
Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
No. 144, Anna Salai, Chennai -- 2.

2.The Chief Engineer
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, Eastern Wing,
Chennai - 2.

3.The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Koluman Road,
Udumalpet - 642 126,
Tirupur District.

4.The District Collector,
Thiruppur District.

5.Spring Renewable Energy Pvt. Ltd.
001, Level G.Pentagon P.S.
Magarpatta City, Hadapsar,
Pune - 411 013,

6. The General Manager,
K.S Wind & Renewable India Pvt, Ltd,
Balakumar Nagar,
Nanchathalaiyur Post,
Dharapuram Taluk,
Thiruppur District.

... Respondents
in WP.No.12722/2020

Prayer in W.P.No.12722/2020 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1 to 4 respondents forbearing the 5th and 6th respondents from drawing Overhead Low Tension Wires or Cable in the petitioner Patta land situated at Kadhakottai Village, Chinnadharapuram Taluk, Tiruppur District for the Survey No.595, 596 from the adjacent land in S.No.600/3, 1057/1 Kadhakottai Village, Chinnadharapuram Taluk, Tiruppur District or from another land without giving any notice or seeking consent from the petitioner for such usage of petitioner patta lands.

For Petitioner : Mr.M.Vijayan
(in All WPs) for Mr. Karan and Uday

For Respondents : Mr.Vijay Mehnath for R 1 to R 3
(in W.P.No.12722/2020) Standing Counsel
Mr.A.Aruldooss for R 4
Government Advocate
Mr.Dwarakesh Prabhakaran for R 5
Mrs.Kanimozhi Mathi for R 6

COMMON ORDER

The issue involved in all these writ petitions are common and therefore all the writ petitions are taken up together and this common order is passed.

2.The common grievance expressed by all the petitioners is that the 5th and 6th respondents [6th and 7th respondents in W.P.No.11345/2020] are entering into the property belonging to the petitioners and erecting poles / drawing overhead wires / cables, inspite of objections made by the petitioners and without paying any compensation.

3.Mr.M.Vijayan, learned counsel appearing on behalf of the petitioners submitted that only M/s.Spring Renewable Energy Private Limited has been authorised by the order passed by the Central Electrical Authority dated 21.07.2020, under Section 164 of the Electricity Act, 2003, for laying transmission lines and this Company has delegated the authority to another Private Company and the Officials belonging to that Company are

illegally entering into the property to lay towers and draw overhead lines. The power given to M/s.Spring Renewable Energy Private Limited cannot be delegated to any other Company. The learned counsel for the petitioners further submitted that insofar as the writ petitioner in W.P.No.11345/2020 is concerned, she was promised to be paid a sum of Rs.15 lakhs and she was also promised that the tower will be erected in the corner of the property and whereas she was paid only a sum of Rs.5 lakhs and hasty steps are being taken to erect the tower inside the property of the concerned petitioner. Insofar the other petitioners are concerned, they have objected to the entry of the Officials and given representation to the District Collector and inspite of the same, no action has been taken and hasty steps are being taken to draw the overhead lines. The learned counsel for the petitioners further submitted that Section 10 (d) of the Telegraph Act, itself specifically provides that the Officials will have to cause very little damage to the property while carrying on with the work and for whatever damage is been done, compensation will have to be paid. The 6th respondent has filed a counter affidavit and the relevant portions are extracted hereunder:

3. Solar Energy Corporation of India Limited (SECI) issued a tender inviting bid for setting up a 300 MW inter-state transmission system connected wind power project at Mulanur, Dharapuram, Tirupur, Tamil Nadu (Project). Spring Energy Private Limited, the parent company of the 6th Respondent bid for the tender and was successfully awarded the same by way of the Letter of Award dated 1 June 2018. Thereafter, in accordance with the terms stipulated in this Letter of Award, Sprng Energy Private Limited (the successful bidder) nominated its subsidiary, the 6th Respondent, as the project company to undertake the execution of the works for this Project. 4. Pursuant to its nomination, the 6th Respondent entered into various contracts in relation to the Project. The 6th Respondent executed a Power Purchase Agreement dated 4 September 2018 in respect of the Project with SECI. The 6th Respondent also appointed Nordex India Pvt. Ltd. (Nordex) under a Works Contract, Services Contract and Wrap Contract, all dated 27 December 2018, to inter alia install, erect and commission the wind turbine generators for the Project. Nordex in turn sub contracted the scope of work involving the erection of transmission lines and towers to the 7th Respondent herein - K. S Wind and Renewable India Private Limited - under the Sub-Contract Agreement dated 14 March 2019.

5. Pursuant to the above contractual framework, the 7th Respondent is responsible for undertaking the installation and erection of 230 kV single circuit line on double circuit towers from the pooling substation at the Project site situated in Tirupur till the receiving substation situated at Karur. The 7th Respondent is also responsible for identifying the properties over which the circuit towers/circuit lines have to be set up and for ensuring the execution of the right of way agreements, negotiation for the payment of compensation and any connected formalities before the execution of its works.

6.I submit that pursuant to the above contractual framework the 7th Respondent is the company that is engaged in the erection of circuit towers/circuit lines and identifies the properties over which such works are to be carried out for the Project. The 6th Respondent in its capacity as the owner of the Project is not directly involved in the execution of these works or the discussions with the landowners. I submit that the 7th Respondent is the party that is entrusted with and equipped to respond to any concerns by the landowners raised in connection with this scope of work and also the alleged disputes raised by the petitioner in the captioned petition.

Statutory Approvals for the Project

8. I submit that the 6th Respondent has the necessary government approvals to carry out the present Project and has always complied with applicable laws and regulations in the execution of the Project. Pertinently, in respect of the Project, the 6th Respondent has the following authorizations/approvals:

(a) The Power Grid Corporation of India Ltd. vide its letter dated 13 July 2018 has granted stage-II connectivity to the 6th Respondent for the Project.

(b) The Central Electricity Authority vide letter no. CEA-PS-12-14(20)/1/2018 PSPA-II Division-Part(1) 1/3669/2019 dated 18 January 2019 had granted approval to the 6th Respondent under Section 68 of the Electricity Act, 2003, for construction of 30.214 km of 230 kV single circuit transmission line from the Mulanur Pooling Sub Station (Tirupur) to

the Pugalur Sub Station.

(c) The Central Electricity Authority vide Order No. F. No. CEA-PS-12 14(21)/1/2018-PSPA-Il Division dated 21 July 2020 published in the Gazette of India has granted the 6th Respondent authorization under Section 164 of the Electricity Act, 2003 (Electricity Act) for construction of 30.214 km of 230 kV Single Circuit Transmission line from the Mulanur pooling substation (Tirupur) to the Pugalur Substation.

9. The 6th Respondent, therefore, has the authority to have the transmission lines laid for the Project, through its contractors and their sub-contractors, in accordance with the approvals as granted above. The 7th Respondent has been appointed to carry out this scope of work, in accordance with the approvals, for the Project.

10. The Project has progressed substantially, and the 6th Respondent is obligated to ensure that the Project is completed as per the timelines stipulated by SECI. I submit that the Project stands to significantly benefit the public and therefore, the present unsubstantiated petition seeking to prevent the Respondents from carrying on with their scope of work, ought to be promptly dismissed.

4. The 7th respondent has also filed a counter affidavit. The relevant portions are extracted hereunder:

"12. I submit that the 7th respondent is under the process of erecting towers by getting prior permission from land owners by paying appropriate compensation and entering ROW agreement with and land owners by complying legal parameters for the usage of the land for erecting towers on their land. I submit that when there was objections, the 7th respondent gave representation dated 08.07.2019 to the Collector and DSP against the illegal objections, requesting to provide safety to ensure the execution of project of Union of India, when there was no action, the 7th respondent approached this Hon'ble High Court by filing W.P.No.32320 of 2019 for direction to consider the representation dated 08.07.2019 sent by the 7th respondent herein and to provide

protection to execute the project work of erecting towers of Ministry of Power and the same was disposed by order of this Hon'ble Court dated 22.11.2019 and the operating of the order is as follows;

"3.Recording the same, this writ petition is disposed with a direction to the District Collector to consider the representation of the petitioner in the light of objections of the land owners and other stake holders and to pass appropriate orders in accordance with law preferably within a period of eight weeks from the date of receipt of this order copy. Consequently, the connected miscellaneous petition is closed. No costs."

5.The learned counsel appearing on behalf of the 6th and 7th respondents submitted that out of 129 towers, 124 towers have already been erected and only 5 towers remain to be erected and the overhead cable has to be drawn. The learned counsel submitted that the 6th respondent has necessary government approval to carry on with the project and the 7th respondent has been appointed to carry out the work through subcontractor in accordance with the approval. The learned counsel further submitted that the issue involved in the present writ petitions was dealt with by the Madurai Bench in WP(MD). No.6319/2020 and orders were passed on 07.08.2020 and this order will squarely apply to the facts of the present case. It was further submitted that the said order was followed in all the subsequent writ petitions in WP(MD).No.22325/2019, 649/2020 and 7597/2020. It was submitted that similar orders can be passed in these writ petitions also.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The issue involved in these writ petitions is squarely covered by the order passed in WP(MD).No.6319/2020. The relevant portions in the order is extracted hereunder:

6.In the case on hand, the Central Electricity Authority, Ministry of Power, Government of India has issued a notification bearing F.No.CEA-PS-12-14(21)/1/2018-PSPA-II Division under Section 164 of the Electricity Act, 2003, conferring all the powers of the telegraph authority to M/s.Spring Renewable

Energy Private Limited for implementing the project. Therefore, even while sustaining the order impugned in the writ petition, I grant leave to the stakeholders to move the first respondent and I mandate the first respondent to positively exercise his powers under Section 16 of the Indian Telegraph Act, 1885.

7. I could have disposed of all these writ petitions with the aforesaid liberty and direction without further ado. But then, this case is inextricably linked to a batch of writ petitions that were filed by the various land owners. When the petitioner proposed to lay electric poles and towers and draw transmission lines, the said land owners resisted and obstructed. They contended that the writ petitioner cannot enter their lands unless he was expressly permitted to do so by the District Magistrate, Karur under Section 16 of the Indian Telegraph Act, 1885. I upheld the said stand and allowed their writ petitions. Therefore, I deem it necessary to reiterate the legal position. This exercise has become necessary as the petitioner's counsel contended that the District Magistrate is obliged to permit the petitioner to proceed with the works because of the issuance of the notification under Section 164 of the Electricity Act, 2003. He also quibbled on the expression "resisted or obstructed" occurring in Section 16(1) of the Indian Telegraph Act, 1885.

8. It would be useful to extract the relevant provisions of both the statutes before I refer to the relevant precedents. Section 164 of the Electricity Act, 2003 is as under :

"Section 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 the provisions of the Indian Telegraph Act, 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 and 16 of the Indian Telegraph Act, 1885 are as under : "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."

"Section 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 (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 he same."

9. Some confusion has arisen in the minds of the land owners, primarily, because of the provisions of the Works of Licensees Rules, 2006. The Central Government had made those Rules in exercise of the powers conferred by Clause 2(e) of Section 176 r/w Section 67(2) of the Electricity Act, 2003. Rule 3(1)(a) of the Works of the Licensees Rules, 2006 states that the licensee may carry out the works with the prior consent of the land owners or occupier of any building or land. The land owners in this case contend that the licensee in this case should obtain their prior consent and if that is not forthcoming, the licensee has to necessarily secure permission from the District Magistrate under Section 16 of the Indian Telegraph Act, 1885.

10. What the land owners forget to note is that Rule 3(4) of the Works of the Licensees Rules, 2006 itself states that nothing contained in Rule 3(4) shall affect the powers conferred upon any licensee under Section 164 of the Electricity Act. The constitutional validity of Section 164 of the Electricity Act 2003 and Section 10 of the Indian Telegraph Act, 1885 was upheld in *Shri Vivek Brajendra Singh vs. State Government*, 2012 SCC OnLine Bom 450. The essence of the said judgment authored by Mr. Justice S.A. Bobde (as his Lordship then was) has been culled out in *Jarnail Singh vs. Maharashtra State Electricity Transmission Co. Ltd* (AIR 2015 Bom 283). The judgments of the Madras High Court have also been on the same lines. In *R. Santhana Raj and another vs. The Chief Engineer, Non Conventional Energy source, Anna Salai, Chennai* WP(MD) No. 8844 of 2011 dated 08.11.2011, His Lordship Mr. Justice V. Ramasubramanian concluded as follows

"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).

(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) 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 rights of owners of private property to their unhindered enjoyment. The Supreme Court pointed out in Dev 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."

The said decision and other subsequent decisions by the Hon'ble Division Bench have been neatly summed up in S.A.Hakim Vs. The District Collector (2016 (3) CTC 285). There is yet another decision of the Hon'ble Division Bench made in W.A.(MD)No.2032 of 2019 etc.. batch, dated 16.07.2020 on the same lines. Therefore, it would be futile to contend in the instant case that the prior consent of the land owners has to be obtained. 11.The question is whether the first respondent can deny permission to the licensee even after the issuance of notification under Section 164 of the

Electricity Act, 2003. Such an issue arises because of the use of the expression "in his discretion" in Section 16(1) of the Indian Telegraph Act, 1885. No interpretation of Section 16 (1) can render the expression "in his discretion" otiose.

12.By virtue of Section 164 of the Electricity Act r/w Section 10 of the Indian Telegraph Act, 1885, the licensee is conferred with certain powers of the telegraph authority. But, this power is hedged with some limitations. The licensee must exercise the power in a manner that he would cause as little as damage as possible. He shall also pay full compensation to all persons interested for any damage sustained by them. The District Magistrate is obliged to ensure that these twin duties are fulfilled. If the licensee is not ready to comply with the same, then the District Magistrate will exercise his discretion to decline permission. Any power has to be exercised in a reasonable manner. The licensee must bear the following words of Kahlil Gibran

"since you must kill to eat, and rob the newly born of its mother's milk to quench your thirst, let it then be an act of worship..."

Merely because the licensee has been clothed with the statutory powers, he cannot barge in or bulldoze his way through or make an unannounced-entry. The land owner or the occupier must be given a reasonable time. 13.One important aspect has to be noted. The person who has been granted the powers of the telegraph authority under Section 164 of the Electricity Act is only M/s.Spring Renewable Energy Private Limited. The writ petitioner is only a sub-contractor. Therefore, the application before the first respondent has to be necessarily made only by M/s.Spring Renewable Energy Private Limited. The petitioner is only acting on behalf of the licensee. The licensee can sub-contract the works but he cannot delegate or sub delegate the statutory powers. The petitioner has no independent authority. He is only acting for and on behalf of his principal.

14.Now the question is whether the District Collector/District Magistrate can sit over the

application or deny permission. When such applications involving implementation of infrastructural projects are filed, the District Magistrate is obliged to expedite the matter. When there is delay, there is consequential cost escalation. In the case on hand, the project involves installation of 127 towers. It appears that 119 towers have already been installed and on account of resistance from the land owners, the remaining eight towers could not be installed. As a result, the entire project has come to a standstill. This ultimately affects the national economy.

15. Having clarified the legal position, I permit M/s. Sprung Renewable Energy Private Limited to submit an application under Section 16 of the Indian Telegraph Act, 1885 before the first respondent. The fifth respondent shall mention that the petitioner has been awarded the sub-contract to carry out the licensed works. The first respondent shall grant permission to the applicant in the light of what has been mentioned above without any delay. Upon the first respondent so permitting, the petitioner as a sub contractor of M/s. Sprung Renewable Energy Private Limited/the fifth respondent, can enter the lands in question to complete the remaining works.

8. I am in total agreement with the above order and hence it is not necessary for me to go into all the issues once again and render a finding.

9. It is seen from records that the 7th respondent has already approached this Court and filed WP.No.32320/2019 and sought for directions to the District Collector to consider the application filed by the 7th respondent, seeking for permission to enter upon the property. This Court has also passed an order on 22.11.2019, giving directions to the District Collector to pass orders, after hearing the parties within eight weeks.

10. This Court does not want to enter into the factual disputes raised in WP.No.11345/2020, with regard to the agreement entered into between the petitioner and the 7th respondent for right of way and the amount agreed to be received for the same. That can also be left open to be considered by the District Collector.

11. In view of the above discussion, there shall be a direction to the 7th respondent, to make a fresh representation to the District Collector, Tiruppur District. The application shall be dealt with by the District Collector, Tiruppur, in accordance with Section 16 of the Indian Telegraph Act, 1885. The District Collector, Tiruppur, shall issue notice to the petitioners and enquire the application given by the 7th respondent, to enter upon the property and pass appropriate orders within a period of four weeks from the date of receipt of the representation from the 7th respondent. Till the orders are passed by the District Collector, Tiruppur, present Status quo shall be maintained.

12. All the writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP
To

1. The Chairman/Managing Director
Tamil Nadu General and
Distribution Corporation Limited,
10th Floor, NPKRR Maligai,
No. 144, Anna Salai, Chennai -- 2.

2. The Chief Engineer
Non-Conventional Energy Sources,
TANGEDCO,
2nd Floor, Eastern Wing,
Chennai - 2.

3. The Superintending Engineer,
Non-Conventional Energy Sources,
TANGEDCO, Koluman Road,
Udumalpet - 642 126,
Tirupur District.

4. The District Collector,
Thiruppur District.

5. The Block Development Officer,
Special Officer, Kanivaadi,
Panchayat Union,
Kannivadi Village,
Dharapuram Taluk, Tiruppur District.

+4ccs to Mr.Dwarakesh Prabakar, Advocate Sr.No.

31437,31436,31438&31439

+1 cc to The Government Pleader, Sr.No. 31682

WP.Nos.11345, 11991, 12414
& 12722 of 2020

MR (CO)
RMP (28/10/2020)



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